



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 141110950-4999-01]

RIN 0648-BE63

Pacific Island Fisheries; Pacific Remote Islands Marine National Monument Expansion

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to establish requirements for fishing in the Pacific Remote Islands Marine National Monument Expansion. The proposed rule is intended to implement fishery management measures consistent with Presidential Proclamation 9173.

DATES: NMFS must receive comments on the proposed rule by [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA-NMFS-2014-0142, by either of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to

<http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0142>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- Mail: Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous), and will accept attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

You may review Presidential Proclamation 9173 (establishing the Pacific Remote Islands Marine National Monument Expansion) (PRI Monument Expansion), Presidential Proclamation 8663 (establishing the Pacific Remote Islands Marine National Monument) (PRI Monument), and the PRI Monument fishing

requirements established in Amendment 2 to the Fishery Ecosystem Plan for the Pacific Remote Island Areas published in 2013, available from www.regulations.gov. Amendment 2 is also available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or from www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS PIR Sustainable Fisheries, tel 808-725-5170.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage Pacific Island fisheries through fishery ecosystem plans (FEP) for American Samoa, the Mariana Archipelago (Guam and the Commonwealth of the Northern Mariana Islands (CNMI)), the Pacific Remote Island Areas (PRIA), Hawaii, and western Pacific pelagic fisheries. Fishing regulations for the Pacific Islands are found mainly in 50 CFR part 665.

In 2009, President Bush issued Presidential Proclamations that established three Marine National Monuments in the Pacific Islands under the authority of the Antiquities Act: the Marianas Trench Marine National Monument (Proclamation 8335), the Pacific Remote Islands Marine National Monument (PRI Monument, Proclamation 8336), and the Rose Atoll Marine National Monument (Proclamation 8337). The Proclamations directed the Secretaries of the Interior and Commerce to take appropriate action pursuant

to their respective authorities under the Antiquities Act, the Magnuson-Stevens Act, and such other authorities as may be available to implement the Proclamations, to regulate fisheries, including allowing for traditional indigenous fishing practices, and to ensure proper care and management of the monuments.

In 2013, the Council incorporated the Proclamations' fishery management provisions into its FEPs. With respect to the PRI Monument, the Council adopted Amendment 2 to the Fishery Ecosystem Plan for the Pacific Remote Island Areas establishing (a) the boundaries of the PRI Monument and various management units, (b) the prohibition on commercial fishing, and (c) management measures for non-commercial and recreational fishing. The Secretary of Commerce approved Amendment 2 on May 2, 2013. NMFS then implemented a final rule that, among other things, established a new subpart H in 50 CFR part 665 for the PRI Monument, based on the Council's recommendations in Amendment 2 (78 FR 32996, June 3, 2013). Specifically, the rule codified the Monument's boundaries and prohibited commercial fishing throughout the Monument. It further established management measures for non-commercial and recreational fishing (i) prohibiting all fishing within 12 nm of islands in the PRI Monument, subject to U.S. Fish & Wildlife Service authority to allow non-commercial fishing in consultation with NMFS and the

Council; (ii) requiring federal permits and reporting for non-commercial and recreational charter fishing to aid in monitoring of fishing activities; (iii) prohibiting sale or exchange through barter or trade of fish caught by a recreational charter boat and all customary exchange; and (iv) prohibiting commercial fishing outside the Monument and non-commercial fishing within the Monument during the same trip.

On September 27, 2014, President Obama issued Presidential Proclamation 9173 titled "Pacific Remote Islands Marine National Monument Expansion" (PRI Monument Expansion). The PRI Monument Expansion includes the waters and submerged lands of Jarvis and Wake Islands and Johnston Atoll that lie from the PRI Monument boundary established in Proclamation 8336 to the seaward limit of the U.S. Exclusive Economic Zone (U.S. EEZ) (as established in Proclamation 5030 of March 10, 1983). The additional area is approximately 308,316 square nautical miles. The intent of the PRI Monument Expansion was to provide expanded protection to objects of scientific interest, including seamounts, deep sea corals, sea turtles, seabirds, and other migratory species.

Proclamation 9173 prohibited commercial fishing in the PRI Monument Expansion and directed the Secretaries of the Interior and Commerce to ensure that recreational and non-commercial fishing continue to be managed as sustainable activities in the

PRI Monument and Monument Expansion. Nothing in Proclamation 9173 changed the management of the PRI Monument, and it did not affect the management or change the boundaries of any island or atoll in the PRI Monument.

At its 161st meeting held from October 20-23, 2014, in Honolulu, the Council recommended amending the FEP regulations to implement the PRI Monument Expansion at Jarvis Island, Wake Island and Johnston Atoll as directed in Proclamation 9173. The Council further recommended that the regulations that now apply within the PRI Monument would be applicable within the PRI Monument Expansion. In this proposed action, and consistent with the existing requirements in the PRI Monument, commercial fishing would be prohibited within the PRI Monument Expansion, and managed non-commercial fishing would be allowed within the Monument Expansion as described above.

Consistent with the Proclamation and Council recommendations, this rule would amend regulations at 50 CFR part 665, subpart H. The fishing requirements for the Monument Expansion would include, among other things, the following:

- Prohibition of commercial fishing;
- Permit and reporting requirements for non-commercial and recreational fishing;

- Prohibition of conduct involving commercial fishing outside the PRI Monument and Monument Expansion and non-commercial fishing within the PRI Monument and Monument Expansion during the same trip; and
- Administrative housekeeping changes made in the 2013 final rule to the Federal permit and reporting requirements at §§ 665.13 and 665.14, and the vessel identification requirements at § 665.16.

Additional background information on this action is found in 78 FR 32996 (June 3, 2013), 78 FR 39583 (July 2, 2013), and 79 FR 58645 (September 29, 2014), and is not repeated here.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Fishery Ecosystem Plans for the Pacific Remote Island Areas and western Pacific pelagic fisheries, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule.

In January 2009, President Bush established, by Presidential Proclamation, the PRI Monument . NMFS implemented a final rule that codified the PRI Monument boundaries, prohibited commercial fishing in the PRI Monument, and established measures for managing non-commercial and recreational fishing in the Monument.

In September 2014, President Obama issued Presidential Proclamation 9173 that expanded the PRI Monument around Jarvis Island, Wake Island, and Johnston Atoll to the seaward limit of the U.S. Exclusive Economic Zone (EEZ). The additional area is approximately 308,315 square nautical miles, which, when combined with the PRI Monument, is an area of approximately 339,960 square nautical miles. This proposed rule would codify the PRI Monument Expansion boundaries and extend the existing fishing management measures, including those that apply to non-commercial fishing, to the expanded area.

The proposed rule would apply to the following categories of small entities: commercial fishing vessels (NAICS code 114111) and recreational charter fishing vessels (NAICS code 487210). NMFS believes that almost all businesses operating as commercial and recreational charter vessels in the U.S. territories and in Hawaii would be considered small entities, with annual revenues below \$7.5 million and \$20.5 million, respectively. The proposed rule would apply to hundreds of fishing vessels, regardless of gear type and size, many of which are primarily non-commercial fishing vessels that occasionally sell fish or take clients out on charter fishing trips. However, as discussed below, the rule will likely have little effect on overall commercial fishing and charter fishing activities relative to the status quo.

Fishing interest and activity in the PRIA, even before the PRI Monument was created, and including fishing within EEZ waters outside of PRI Monument boundaries that were recently included in the expanded boundary around three PRI islands and an atoll, has been low. As of November 2014, the type and number of PRIA fishing permits issued are as follows: Western Pacific pelagic squid (0), troll handline (7), bottomfish (2), crustaceans (0), precious corals (0), coral reef ecosystem (0), and Marine National Monument fishing (0). Even though NMFS

issued several permits, fishing has been limited. In addition to the above permits, some commercial longline and purse seine fishing has also occurred in the EEZ around the PRIA in recent years, outside of PRI Monument waters. Within the EEZ around the PRIA, based on anecdotal information, a small amount of recreational fishing may be occurring by charter vessels visiting Palmyra Atoll from Hawaii, and this low amount of voyaging and fishing could extend to the PRI Monument Expansion areas around Jarvis. With the limited interest, activity, and information on commercial, non-commercial, and recreational fishing in and near the PRI Monument, NMFS estimates that up to 15 vessels would each make one trip annually to the PRI Monument, and most of these trips would be to Palmyra Atoll, which has facilities to support visitors.

This proposed rule would extend all existing PRI Monument requirements to the Monument Expansion areas. Proclamation 9173 prohibits commercial fishing in the Monument Expansion, so this proposed rule would codify that prohibition. This proposed rule could affect businesses operating commercial fishing and charter fishing vessels choosing to operate in the Monument Expansion. This is because the proposed rule prohibits the engaging in commercial fishing outside the Monument Expansion and non-commercial fishing inside the Monument Expansion during the same

trip. Fishermen who wish to sell fish caught during their trip would not be able to fish non-commercially inside the Monument Expansion boundaries; this applies to all fishing vessels, as well as charter fishing vessels. This is likely to have little to no effect on revenues, as fishermen whose primary trip goal is to earn revenue, however modest, will choose not to fish non-commercially in the Monument.

Recreational charter vessel owners and operators would continue to be allowed to fish in the Monument Expansion under a Monument permit, but they may not sell, barter, or trade fish caught in the Monument Expansion, nor may they supplement trip fee revenues by selling fish caught outside the Monument Expansion on the same fishing trip in which they, their customers, or guests, conducted non-commercial or recreational fishing in the Monument Expansion.

In general, the primary revenue sources for charter fishing vessels are charter fees paid by customers and any revenue earned from selling fish would supplement trip fees. The restriction on supplemental fish sales is not expected to have a significant impact to small charter fishing entities because the overall number of recreational fishing trips to the PRI Monument is likely to be less than ten to fifteen each year; indeed, none have been made in 2013-2014 within the Monument Expansion area.

The potential overall number of recreational fishing trips to the newly Monument Expansion is likely to be very small relative to the total annual number of charter fishing trips taken by affected vessels outside the Monument Expansion.

The proposed rule does not duplicate, overlap, or conflict with other Federal rules and is not expected to have a significant impact on small entities (as discussed above), organizations or government jurisdictions. There do not appear to be disproportionate economic impacts from the proposed rule based on home port, gear type, or relative vessel size primarily because the remote distances required to be traveled by non-commercial fishing vessels is likely to reduce interest in fishing by most fishermen, except for fishermen who were already destined to visit the area (such as would occur at Palmyra Atoll Monument). The rule will not result in a benefit to any one class of vessel owners relative to home port, gear type, or relative vessel size: all vessels are welcome to apply for non-commercial permits, and only authorized gear types would be allowed to be used in the Monument Expansion. The proposed rule also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

National Environmental Policy Act (NEPA)

In 2013, the Council prepared an environmental assessment (EA, April 30, 2013) that described the impact on the human environment that would result from implementation of the fishing requirements for the three monuments. Based on the EA, Regulatory Impact Review, evaluation of the economic impacts under the Regulatory Flexibility Act, review of the NEPA criteria for significant effects, NMFS criteria for significance evaluated above, and the information provided in the finding of no significant impact (FONSI, May 1, 2013), NMFS found that there would be no significant impact on the human environment as a result of the action. For this proposed rule, NMFS considered relevant new information and circumstances, and none of the new information indicated that the proposed action would result in a change to impacts previously considered. Thus, NMFS concluded that there is no need to supplement the EA or FONSI.

Coastal Zone Management Act (CZMA)

Because this proposed rule would occur outside the coastal zone of any State and will not have reasonably foreseeable effects on any coastal use or resource, NMFS is not required to coordinate with State agencies under section 307 of the CZMA.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, Commercial fishing,
Fisheries, Monuments and memorials, Pacific Remote Islands.

Dated: January 9, 2015

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to
amend 50 CFR part 665 as follows:

PART 665 -- FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665 continues to
read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. Revise § 665.930 to read as follows:

§ 665.930 Scope and purpose.

The regulations in this subpart codify certain provisions of the Proclamations, and govern the administration of fishing in the Monument.

3. In § 665.931, revise paragraphs (a), (c), and (d) to read as follows:

* * * * *

§ 665.931 Boundaries.

(a) Wake Island. The Wake Island unit of the Monument includes the waters and submerged and emergent lands around Wake Island to the seaward limit of the U.S. EEZ.

* * * * *

(c) Jarvis Island. The Jarvis Island unit of the Monument includes the waters and submerged and emergent lands around Jarvis Island to the seaward limit of the U.S. EEZ.

(d) Johnston Atoll. The Johnston Atoll unit of the Monument includes the waters and submerged and emergent lands around Johnston Atoll to the seaward limit of the U.S. EEZ.

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4. In § 665.932, revise the definition of "Monument", remove the definition of "Proclamation", and add the definition of "Proclamations" in alphabetical order to read as follows:

§ 665.932 Definitions.

* * * * *

Monument means the waters and submerged and emergent lands of the Pacific Remote Islands Marine National Monument and the Pacific Remote Islands Marine National Monument Expansion, as defined in § 665.931.

* * * * *

Proclamations means Presidential Proclamation 8336 of January 6, 2009, "Establishment of the Pacific Remote Islands Marine National Monument," and Presidential Proclamation 9173 of September 29, 2014, "Pacific Remote Islands Marine National Monument Expansion."

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