



Review of American Samoa Fisheries Performance and the Large Vessel Prohibited Area

**Prepared for the 145th SSC and 192th Council Meeting
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Overview

On July 6, 2021, NMFS reinstated a regulatory exemption that allows certain U.S. longline vessels 50 ft and larger to fish in portions of the American Samoa Large Vessel Prohibited Area (LVPA; 86 FR 36239). The original LVPA exemption action included a provision for the Council to annually review¹ the effects of the exemption on catch rates, small vessel participation, and sustainable fisheries development initiatives. This document provides the first review following the reinstatement of the exemption rule.

History of the LVPA

The Large Vessel Prohibited Area (LVPA) was established in 2002 through a regulatory amendment under the Pelagic Fishery Ecosystem Plan (FEP) to reduce competition of large (greater than 50 feet length) longline vessels with small-scale domestic fisheries, including longline vessels under 50 feet length and trolling vessels. Historically, most participants in the small-scale domestic longline fishery had been indigenous. American Samoans with vessels under 50 ft in length, most of which were alia; locally-built fiberglass or aluminum catamaran boats under 40 ft in length. In the mid-1990s, American Samoa commercial fishermen shifted from troll gear to longline gear largely based on the fishing success of 28-ft alia vessels that engaged in longline fishing in the EEZ around Samoa. Following this example, the alia fishermen in American Samoa began deploying short monofilament longlines with an average of 350 hooks per set from hand-operated reels. Their predominant catch was albacore tuna, which they marketed to the tuna cannery. By 1997, 33 alia vessels received general longline permits from NMFS to fish in federal waters around American Samoa, although only 21 were actively fishing at that time. However, since 2008, only one alia vessel has been actively longline fishing and NMFS cannot report its landings due to data confidentiality rules. Troll fishers land relatively small amounts of pelagic MUS with just over 30,000 lb reported in 2017. The average number of reported troll trips from 2012 to 2021 was 151 per year with 134 reported in 2021. The reduction in vessel participation in the pelagic trolling fishery is due to high fuel prices and other economic hardships. Trolling does occur while fishermen move between bottomfish fishing locations or transitioning to and from port, which creates large apparent fluctuations in CPUE for pelagic species.

The 'large' longline vessels comprise 98% of pelagic catch in American Samoa, yet have also experienced steady decline in catch since 2002, when the fleet caught 5,948 mt of albacore and declined to a 1,560 mt annual average from 2012 to 2021. Fishery performance peaked at nearly 40 albacore per 1000 hooks in 1996 and had decreased to 11.8 fish per 1000 hooks from 2012 to 2021.

¹ <https://www.wpcouncil.org/wp-content/uploads/2016/10/LVPA-Exemption-Regulatory-Amendment.pdf>

CPUE was 14.8 albacore per 1000 hooks in 2012, hit a historical low of 8.5 albacore per 1000 hooks in 2020 and saw a slight increase in 2021 with 9.2 albacore per 1000 hooks. Profitability for the fleet is reached when catch rates are in excess of 12 albacore per 1000 hooks. Since the establishment of the LVPA in 2002, the American Samoa longline fishery has been experiencing declining catch rates of albacore (as indicated above), lower fish prices, and increased fuel and operating costs. In the immediate period following the LVPA establishment (2002-2009), longline incomes had decreased by 96%, with average revenues only half of what was necessary for profitable operations.

Concerned that the LVPA might be unnecessarily reducing the efficiency of the larger American Samoa longline vessels by displacing the fleet from a part of their historical fishing grounds and given the lack of direct high seas access from the U.S. EEZ around American Samoa, the Council began exploring ways to assist the longline fishery, while ensuring conservation of affected stocks and minimizing impacts to other fisheries. To address current and recent fishery conditions, the Council recommended in 2015 that NMFS provide a limited exemption from the LVPA based on vessel size, and allow federally permitted U.S. longline vessels 50 ft and longer to fish in portions of the LVPA, and NMFS implemented the exemption effective January 2016 (81 FR 5619). That action allowed large U.S. vessels that hold a Federal American Samoa longline limited entry permit to fish within the LVPA to within about 12-17 nm from shore around Swains Island, Tutuila, and the Manua Islands. Large vessels continued to be restricted from fishing within the remaining portions of the LVPA.

The Government of American Samoa (ASG) filed a lawsuit challenging the 2016 exemption Final Rule, arguing NMFS did not consider, as other applicable law, the Deeds of Cession with respect to the protection of cultural fishing rights of the people of American Samoa. In March 2017, the U.S. District Court ruled in favor of ASG and held that the 2016 final rule was arbitrary and capricious because NMFS did not consider whether the rule and its impacts on cultural fishing were consistent with the Cessions. The Court vacated and remanded the regulations to NMFS, and NMFS subsequently repealed the 2016 rule, eliminating the exemption from the LVPA (82 FR 43908, Sep. 20, 2017). In September 2017, NMFS and the Department of Justice appealed to U.S. Court of Appeals for the Ninth Circuit.

The Council reconsidered whether to allow American Samoa longline limited entry vessels greater than 50 feet in length to fish within areas of the LVPA in light of its responsibility to preserve and protect cultural fishing, and considered final action at the 173rd Meeting in June 2018. PIFSC provided a draft cultural fishing research paper for Council and NOAA General Counsel review, and the SSC determined that the PIFSC research provided sufficient framework to evaluate cultural fishing impacts. The Council took action to provide a four-year exemption for vessels permitted under the American Samoa longline limited entry program to fish within the LVPA seaward of 12nm around Tutuila, Manua, and Swains, and 2 nm around the offshore banks (Figure 1). Implementation of this recommendation was placed on hold pending the outcome of the appeals process.

In September 2020, the 9th Circuit Court of Appeals reversed the District Court Decision and held that NMFS had properly considered the impact of the 2016 LVPA rule on cultural fishing and fishing communities, regardless of whether it specifically considered the Cessions. In February

2021, the ASG petitioned the Supreme Court of the United States for a *Writ of Certiorari*, which was denied June 21, 2021. Effective July 6, 2021, NMFS reinstated the 2016 LVPA Exemption (86 FR 36239, published July 9, 2021). The 2016 LVPA exemption is depicted in Figure 1.

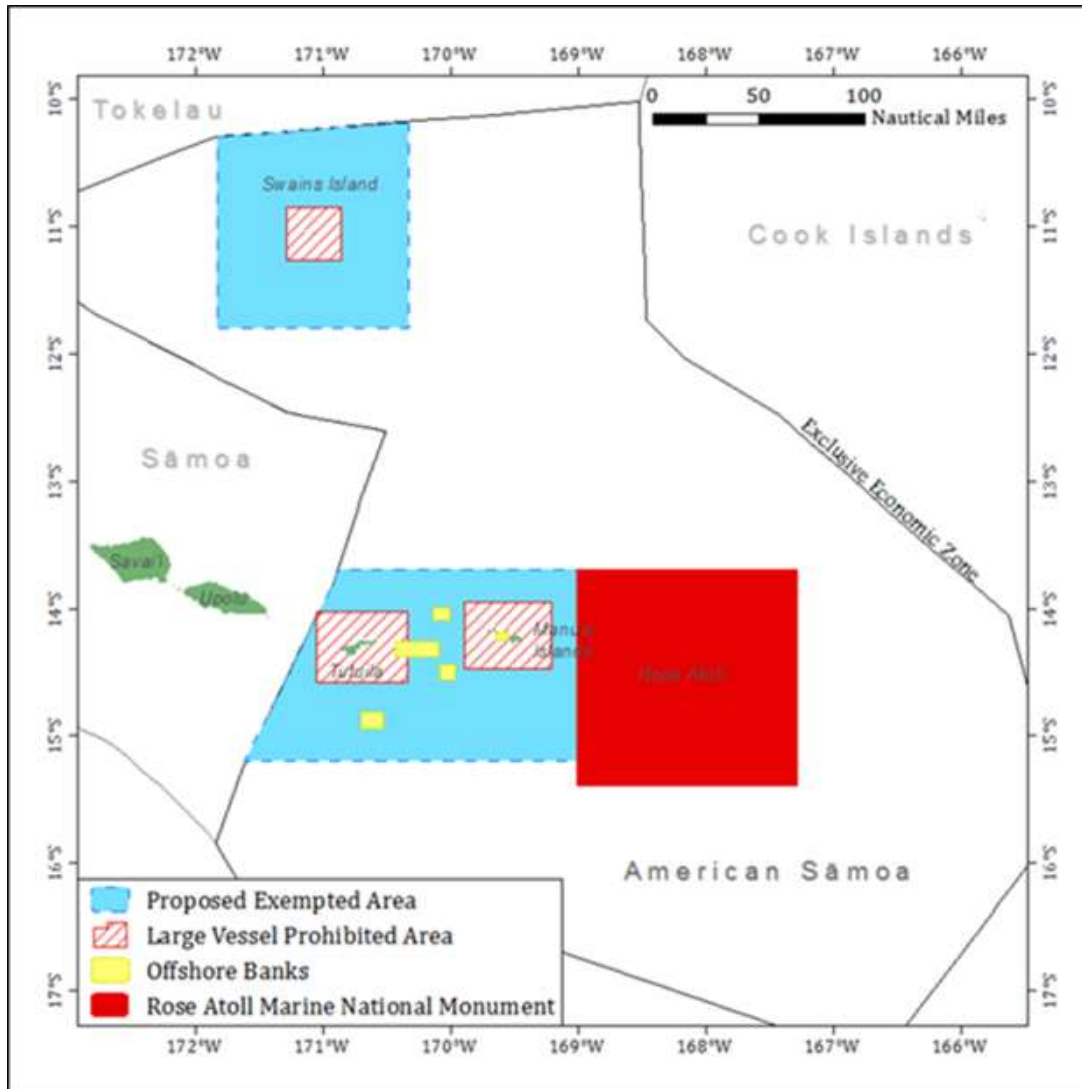


Figure 1 – Exempted area of the LVPA from Council Action at its 2015 meeting, NMFS 2016 proposed rule, and 2021 implemented regulatory exemption (86 FR 36239)

Review of the American Samoa Fishery Performance Since the LVPA Exemption Reinstatement

One year has passed since the LVPA exemption for certain U.S. longline vessels 50ft and larger was reinstated in July 2021. The original LVPA exemption action that the Council recommended in 2016 included a provision for the Council to annually review the effects of the exemption catch rates, small vessel participation, and sustainable fisheries development initiatives. According to data sources provided in the annual Pelagic SAFE Report, the LVPA likely did not provide benefits for ‘small’ vessel pelagic fisheries (troll and alia) that operate out of American Samoa.

Data collected on American Samoa troll fisheries are provided through creel surveys conducted by the American Samoa Department of Marine and Wildlife Resources (DMWR), which is processed and made available in the Stock Assessment and Fishery Evaluation (SAFE) Report². Longline catch and effort data (for both ‘large’ and other longline vessels including alias) are collected through the Pelagic Longline Logbook program, managed by PIFSC and also made available in the annual SAFE Report.

A precipitous decline in longline fishing effort within the U.S. EEZ around American Samoa did not reflect any notable benefits to the performance of troll fisheries from 2010 to 2020 (Figure 2). In 2021, the year in which the LVPA exemption was reinstated, trolling catch rates for skipjack tuna nearly doubled while longline effort from the American Samoa longline fishery within the U.S. EEZ around American Samoa increased by 25% from 2020 to 2021. Only a single alia vessel has been operational and NMFS cannot report its landings due to data confidentiality rules.

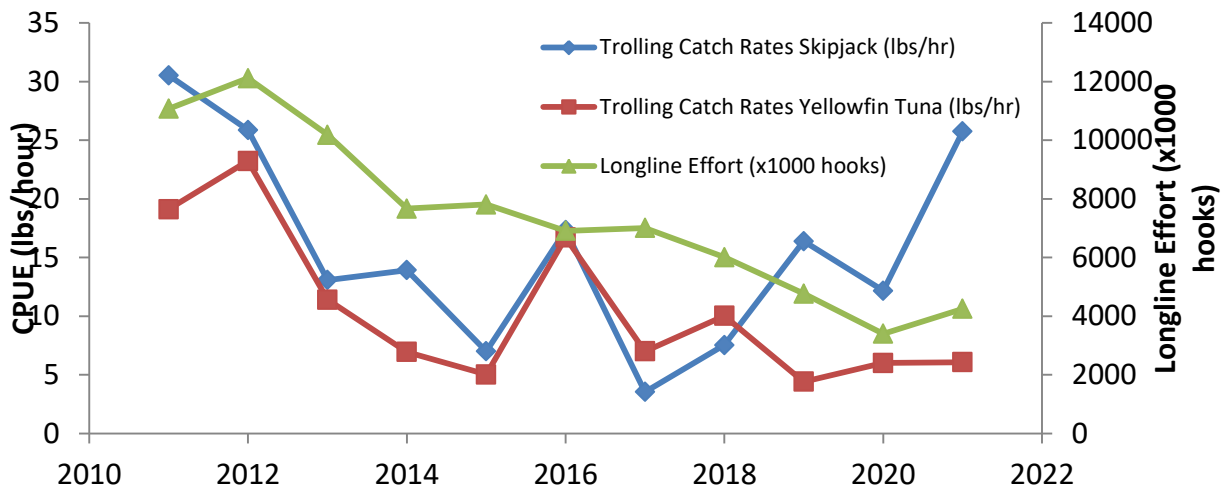


Figure 2 – Fishery performance of troll fisheries (pounds per hour) and longline fishing effort of the American Samoa longline fleet operating in the U.S. EEZ around American Samoa. Data is provided by the annual SAFE Report (WPRFMC, 2022)².

² WPRFMC, 2022. Annual Stock Assessment and Fishery Evaluation Report for the Pacific Pelagic Fisheries Fishery Ecosystem Plan 2021. T Remington, M Fitchett, A Ishizaki, J DeMello (Eds.). Honolulu: Western Pacific Regional Fishery Management Council.