



# Federal Register

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**Wednesday,  
April 7, 2004**

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## **Part II**

### **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**50 CFR Parts 223, 224, and 660  
Fisheries Off West Coast States and in  
the Western Pacific; Highly Migratory  
Species Fisheries; Final Rule**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 223, 224 and 660**

[Docket No. 031125294-4091-02; I.D. 102903C]

RIN 0648-AP42

**Fisheries Off West Coast States and in the Western Pacific; Highly Migratory Species Fisheries**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS publishes a final rule to implement the approved portions of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP), which was submitted by the Pacific Fishery Management Council (Pacific Council) for review and approval by the Secretary of Commerce and was partially approved on February 4, 2004, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The intended effect of this final rule is to establish Federal management of manage U.S. fisheries for Pacific tunas, sharks, billfish, swordfish, and other highly migratory fish in the surface hook and line, drift gillnet, harpoon, pelagic longline, purse seine, and recreational fisheries in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California and (for U.S. vessels) in adjacent high seas waters. This final rule will prevent overfishing of the fish stocks to the extent practicable and achieve optimum yield for the U.S. fisheries involved while minimizing bycatch and protected species interactions consistent with the Magnuson-Stevens Act and other applicable law. The final rule implements consistent management of these fisheries with respect to the states, other fishery management councils, and international agreements. The final rule will promote the long-term economic health of the fisheries.

**DATES:** Effective May 7, 2004, except for §§ 660.704 Vessel identification, 660.707 Permits, 660.708 Recordkeeping and reporting, 660.712(d) Vessel monitoring system, 660.712(f) pre-trip notification, which are effective 60 days after the date of publication in the **Federal Register** of a notice announcing approval of the Paperwork Reduction Act clearance request for this

information collection; and for § 660.712(e) Protected species workshop, which is effective January 1, 2005.

The prohibitions associated with the delayed requirements are applicable on the dates of the respective requirements as listed.

**ADDRESSES:** Copies of the FMP may be obtained from Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220-1384. Copies of the Final Environmental Impact Statement (FEIS) and associated final regulatory impact review (RIR) and final regulatory flexibility analysis (FRFA) are available from the Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Svein Fougner, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or faxed to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Sustainable Fisheries Division, NMFS, at 562-980-4040.

**SUPPLEMENTARY INFORMATION:** On December 10, 2003 (68 FR 68834), NMFS published a proposed rule to implement the proposed FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* That proposed rule summarized the history of development of the FMP and its proposed conservation and management measures, and that discussion will not be repeated here. The comment period for the proposed rule ended on January 26, 2004. All provisions of the proposed FMP were approved on February 4, 2004, except a provision applicable to longline fishing by vessels with permits issued under the FMP. That issue is discussed below.

This final rule and its authorizing FMP are a response to increasing concern about the effect of fishing on HMS off the U.S. West Coast and on ocean resources caught incidentally to fishing for HMS. HMS comprise numerous species of tuna, billfish, oceanic sharks and other species that range throughout the Pacific Ocean. A significant amount of information exists on some species, such as some of the tunas, but comprehensive stock assessments are needed for many species, which are harvested by numerous coastal and distant-water fishing nations throughout the Pacific

Ocean. U.S. West Coast fishermen fish HMS in the U.S. exclusive economic zone (U.S. EEZ) and on the high seas, and in some cases (*e.g.*, Canada for albacore), in the exclusive economic zones of other nations.

Marine mammals, sea turtles, and sea birds caught incidentally to fishing are also affected by some of the fishing gear used to target HMS. The effect of fishing gear on protected resources is a problem throughout the Pacific Ocean, and the U.S. has taken action under the authority of the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, and the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, to minimize the impact of U.S. vessels fishing longline, drift gillnet, and purse seine gear on these resources.

This final rule implements management measures necessary for management of the HMS fisheries, providing a foundation for future management actions that might be necessary as U.S. and international HMS fisheries change.

**Management Unit Species**

The species in the management unit are: striped marlin, swordfish, common thresher shark, pelagic thresher shark, bigeye thresher shark, shortfin mako (bonito shark), blue shark, north Pacific albacore, yellowfin tuna, bigeye tuna, skipjack tuna, northern bluefin tuna, and dorado (also commonly referred to as mahi mahi and dolphinfish).

**Fishing Gear Employed**

The commercial gears in the management unit are surface hook-and-line, drift gillnet, longline, purse seine, and harpoon. Charter recreational vessels are subject to permit and reporting requirements and may be subject to observer requirements. No specific requirements are established for anglers using hook-and-line gear.

**Permits**

The final rule requires a permit with an endorsement for a specific gear for all commercial vessels. A permit would also be required for all recreational charter vessels. The purpose of a permit is to identify the vessels in the HMS fisheries so that surveys can be made when management information is required and to notify all participants of potential management actions affecting the fisheries. Permits based on gear type make surveys more efficient because landing and economic information is often needed for specific gear types. Permits would be issued to the owner of a specific vessel for a 2-year term. Data would be maintained so that landings by the permitted vessel or by the owner

of the vessel can be summarized, which would give the Pacific Council flexibility in determining qualifications for limited entry permits if the Council should decide to develop a limited entry program. No Federal limited entry program is being proposed at this time because the Pacific Council does not have sufficient information to determine the need for such a program; however, the Pacific Council has assigned its HMS Management Team to begin evaluating a limited entry program for longline vessels fishing from West Coast ports. A limited entry program would require substantial analysis and an amendment to the FMP.

NMFS will administer the new permit system in the following manner. NMFS will begin the permit process by issuing HMS permit application forms to all individuals on this list with the required information filled in to the extent possible. Much of the needed information is already available. For example, NMFS has already compiled a list of vessels that would likely fall under the jurisdiction of the FMP. Permits are currently required for vessels fishing on the high seas under the authority of the High Seas Fishing Compliance Act of 1995 and for longline vessels fishing under the authority of the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Western Pacific Pelagics FMP). In compliance with U.S. obligations under the Tuna Conventions Act of 1950, NMFS has compiled and provided to the Inter-American Tropical Tuna Commission information for a vessel register including all U.S. vessels that fish for tuna in the eastern Pacific Ocean. This information will be put on the forms mailed to prospective permittees. There would be no performance criteria (e.g., historic fishing) to qualify for a permit. However, the vessel owner would have to confirm information on the form and provide information for blank spaces on the form about the vessel or owner in order to have the permit activated by notice from NMFS. NMFS would then notify owners to confirm the activation of their permits when the final information is received and processed. Vessel owners who have not received confirmation of activation of a permit to harvest HMS within 30 days of submission of their applications should contact NMFS (see **ADDRESSES**) to advise of their interest. Persons who have not been sent an application form within 60 days of the effective date of the final rule and who want a permit will need to apply for an HMS permit. Application forms also will be available

by mail and on the SWR home page for persons who have not been contacted by NMFS. Clearance has been requested under the Paperwork Reduction Act for the information collection associated with the permit process. A notice will be published in the **Federal Register** when approval of the collection has been received, and 60 days after that notice, any vessel fishing for HMS in the fishery management area, or landing HMS in Washington, Oregon or California, will have to have a valid HMS permit registered for use with that vessel. Once issued, the permit must be maintained on board the vessel unless the vessel was at sea when the permit was issued. There would be no cost to fishermen for this permit. Fishing can continue without a permit until the permit requirements are in effect.

#### **Recording and Recordkeeping**

The final rule requires all permit holders on commercial fishing vessels and recreational charter vessels to maintain a logbook of catch and effort in the HMS fisheries. The final rule also requires all permit holders to submit data in the form and manner specified by state laws. Logbooks must be submitted to the Regional Administrator or the appropriate state agency following the end of a fishing trip. Federal logbooks are now required for (1) vessels fishing on the high seas under the authority of the High Seas Fishing Compliance Act of 1995 (HSFCA); (2) vessels fishing for tuna under the authority of the Tuna Conventions Act of 1950; and (3) vessels fishing under the authority of the regulations implementing the Western Pacific Pelagics FMP. Under this final rule, the same form used under the HSFCA for troll vessels fishing albacore on the high seas would become mandatory for all albacore fishing. Clearance has been requested under the Paperwork Reduction Act for the information collection associated with the Federal logbook reporting requirement. A notice will be published in the **Federal Register** when approval of the collection has been received, and 60 days after that notice, any vessel fishing for HMS in the fishery management area, or landing HMS in Washington, Oregon or California, will have to report under these regulations. Until then, no new Federal reporting requirements are in effect. It is noted that there are currently several state reporting requirements in effect. The State of California requires a logbook for harpoon vessels, drift gillnet vessels, and recreational charter vessels. The State of Oregon requires a logbook for drift gillnet vessels. A person filing

these state logbooks in the manner and form required by state law would satisfy Federal reporting requirements under this final rule. Duplicate logbooks would not be required. Logbook forms will be available for downloading from the Southwest Region home page.

#### **Bycatch**

A number of provisions are included in the FMP to assess and reduce bycatch; however, the FMP recognizes that better information is needed to assess the amount and type of bycatch in HMS fisheries. The FMP requires that NMFS, in consultation with the Pacific Council, its advisory bodies, and the fishery participants, develop observer sampling designs within 6 months of approval of the FMP for the longline, surface hook-and-line, small purse seine fisheries, and recreational charter vessel fisheries. However, a vessel operator of any vessel registered for use under these regulations must carry an observer when so requested by the Regional Administrator. An observer program is already in effect for drift gillnet vessels. In the longer term, NMFS will also develop an observer sampling plan for private recreational vessels to assess potential ways of improving information on managed species and on the quantity of bycatch in recreational fisheries.

#### **Protected Species and the Framework Process**

Drift gillnet and longline vessels encounter endangered and threatened sea turtles and marine mammals during fishing operations, and longline vessels encounter significant numbers of birds. Minimizing the impacts on these species has required regulatory action in the past under the authority of the MMPA and the ESA. Area closures and special equipment apply to drift gillnet and longline vessels. A possibility exists that other fishing gear used to harvest highly migratory species may also have an impact when more data is obtained. It also is likely that advances in gear or fishing techniques will reduce or prevent mortality from takes of these species in the future. The FMP recognizes that the Pacific Council is the body best suited to weigh and consider all potential impacts on fishing for HMS from West Coast ports. Section 118(f)(9) of the MMPA authorizes the Assistant Administrator for Fisheries (AA) to promulgate regulations governing commercial fishing operations to implement a take reduction plan to protect or restore a marine mammal stock or species. Likewise, vessels fishing for highly migratory species may have an impact on threatened or endangered species, which could

require action by the AA under the authority of the ESA. The Take Reduction Team established by the MMPA reports to NMFS and biological opinions provide guidance to NMFS on actions needed to protect threatened and endangered species. The AA will also look to the Pacific Council for recommendations on how best to implement any necessary measures. If appropriate, the Pacific Council will utilize the framework processes in the FMP to address these issues. This process does not prevent the AA from taking action under the authority of the MMPA and the ESA independent of the Council process.

### Major Issues

The principal issue addressed in consideration of the Pacific Council's proposed FMP has been management of the West Coast longline fishery. The Council's preferred alternative with regard to longline fishing was (1) to prohibit longline fishing in the U.S. EEZ; (2) for longline vessels fishing outside the U.S. EEZ and east of 150° W. long., to adopt the same restrictions as those that applied in 2003 to longline vessels fishing with a longline limited entry permit under the Western Pacific Pelagics FMP, except that the restrictions that prevent shallow sets for swordfish would not apply; and (3) for longline vessels fishing west of 150° W. long., to adopt all of the restrictions that applied to longline vessels fishing with a longline limited entry permit under the Pelagic FMP in 2003, which effectively prohibited shallow sets for swordfish.

The restrictions as proposed to prevent shallow sets for swordfish west of 150° W. long. were designed to reduce the impact on threatened and endangered sea turtles, not swordfish; however, the Pacific Council felt that there was not sufficient information available about fishing interactions with sea turtles in the eastern Pacific to justify restricting swordfish sets east of 150° W. long. Thus, owners of longline vessels fishing out of West Coast ports whose vessels were not registered for use under a western Pacific longline limited entry permit would have been able to target swordfish in the eastern Pacific east of 150° W. long. They also would have had to comply with all other restrictions, including the requirement to maintain a VMS on board the vessel, line clippers, and dip nets, as well as complying with the proper handling of sea turtles and seabirds.

This approach would have established consistency (west of 150° W. long.) with regulations applicable at the

present time to vessels fishing under regulations implementing the Western Pacific Pelagics FMP, while minimizing the economic impact on vessels fishing from West Coast ports by not imposing the restrictions east of 150° W. long.

In reviewing the proposed FMP, however, NMFS engaged in consultations under section 7 of the ESA to evaluate the impacts of the fisheries on species listed as threatened or endangered under that statute. The consultation concluded that allowing shallow sets for swordfish east of 150° W. long. would appreciably reduce the likelihood of survival and recovery in the wild of loggerhead sea turtles. Therefore, that provision of the FMP has been disapproved, and NMFS is proceeding with rulemaking under the authority of the ESA to protect sea turtles east of 150° W. long. Those regulations could become effective at the same time as or even before the final rule implementing the FMP and would remain in effect as long as necessary to ensure that the fishery is operated to conform to the ESA. The rule will be found at 50 CFR Part 223.

In addition, this final rule has a new § 660.720 to ensure adequate protection for sea turtles in the period between implementation of the final rule and implementation of specific provisions that are contingent on vessels being registered for use for specific gear types. The sea turtle conservation provisions in § 660.712 and associated prohibitions of this rule pertaining to longline fishing are generally tied to the effective date by which vessels must be registered for use with specific gear under permits being issued under the rule. The final rule provides vessel owners with time to obtain those permits after the permit requirement becomes effective, which as noted earlier will depend on clearance under the Paperwork Reduction Act. To ensure that excessive sea turtle takes will not occur while permits are being processed and issued, this rule establishes sea turtle protective provisions (e.g., no shallow swordfish sets, no possession of light sticks, incidental swordfish landing limit of 10 fish per trip, gear requirements) to be implemented immediately for West Coast longline vessels fishing west of 150° W. long. even though permit requirements are not yet effective.

All other provisions of the proposed FMP were approved and this final rule implements those provisions.

### Comments and Responses

*Comment 1:* One comment indicated that the FMP violates the MMPA. This comment stated that the California-Oregon drift gillnet fishery is currently

operating without any take authorization for ESA listed marine mammals. It asserted that NMFS on October 30, 2000, illegally issued a permit under section 101(a)(5)(E) of the MMPA allowing take of sperm, fin, humpback, and eastern stock of stellar sea lion. Further, it asserted that the permit has now expired. Authorizing the continuation of the drift gillnet fishery through promulgation of the final rule to implement the FMP without a lawful permit based on a current finding of negligible impact, and without a recovery plan for the impacted species, would, therefore, be unlawful. The commenter also asserted that the continuation of the drift gillnet fishery violates the MMPA because the fishery has not reached the zero mortality rate goal (ZMRG) called for by the MMPA, notwithstanding that NMFS has yet to define ZMRG as required under the MMPA. The 2003 Draft Pacific Stock Assessment Report estimates 23 Northern Right Whale dolphins mortalities per year in this fishery which is in excess of the ZMRG for the species (8–16 depending on interpretation). Similar concerns were raised for the take of short-finned pilot, sperm, humpback, and fin whales.

*Response:* It is correct that the drift gillnet fishery is not operating under an MMPA section 101(a)(5)(E) permit at this time; however, NMFS is in the process of preparing a **Federal Register** document that will consider the necessity of issuance of a permit to authorize the incidental take of listed marine mammals under the ESA by the California/Oregon drift gillnet fishery under section 101(a)(5)(E) of the MMPA. There have been no listed marine mammals observed taken by the California/Oregon drift gillnet fishery since NMFS issued its 101(a)(5)(E) permit in 2000. This final rule maintains the closure of the fishery (now implemented under the authority of the MMPA and ESA) from February 1 through April 30 each year off California and Oregon, and a 101(a)(5)(E) permit would not be necessary during this period. If NMFS concludes that there is a permit requirement, appropriate action will be taken before the fishery reopens.

In addition, in 1996, NMFS convened the Pacific Offshore Cetacean Take Reduction Team to address the serious injury and mortality of strategic marine mammals stocks that were incidentally taken during commercial fishing operations by the California/Oregon drift gillnet fishery. In 1997, NMFS issued regulations to implement the Pacific Offshore Cetacean Take Reduction Plan (POCTRP). The POCTRP

has been successful at reducing strategic marine mammal stocks to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans. In addition, the Pacific Offshore Cetacean Take Reduction Team and the Pacific Scientific Review Group have both recommended no further strategies to reduce marine mammals caught incidentally by the California/Oregon drift gillnet fishery.

*Comment 2:* One comment indicated that the FMP violates the Magnuson-Stevens Act with respect to bycatch because the FMP provides no tangible management measures to reduce bycatch levels as required under the Magnuson-Stevens Act. For example, the California-Oregon Drift Gill Net fishery has high rates of bycatch of ocean sunfish and blue sharks and no actions are proposed to reduce this bycatch. Likewise, the large vessel tuna purse seine fishery catches juvenile tunas and sharks, yet the FMP does not include measures to address these bycatch issues.

*Response:* The Magnuson-Stevens Act requires that FMPs establish a standardized reporting methodology for assessing bycatch; reduce bycatch to the extent practicable; and reduce mortality of unavoidable bycatch to the extent practicable. In the recreational fishery, this includes a voluntary catch and release program in which released fish would not be considered bycatch. The Magnuson-Stevens Act does not require measures to reduce bycatch that are not practicable. In accordance with the Magnuson-Stevens Act, NMFS is developing a bycatch protocol that describes common elements of a standardized bycatch reporting methodology for fisheries under the jurisdiction of the agency. Consistent with this protocol, Chapter 5 of the FMP reviews all the fisheries to assess bycatch and evaluates the potential and practicability of alternative approaches (gear modifications, changes in fishing techniques, time/area closures, etc.) to reduce bycatch and of unavoidable bycatch mortality as required. The FMP concludes in most instances that measures already in place address bycatch to the extent practicable, though it is noted that the collection of additional information through observer programs is necessary to provide a better factual basis for developing and evaluating new alternatives. The final regulations require mandatory recording and submission of fishing logbooks for all commercial gear types and for the

recreational CPFV fishery. For those HMS fisheries not already carrying at-sea observer's under authority of the MMPA or the ESA, the FMP will authorize the placement of observers on board at the discretion of the NMFS Regional Administrator to document, among other things, bycatch and protected species interactions. The FMP mandates NMFS to develop observer coverage levels and sampling designs based on the analysis of available observer data and following, to the extent practical, elements of the bycatch protocol. In the meantime, with respect to specific bycatch concerns for individual fisheries, it is noted that the majority of the ocean sunfish captured as bycatch in the DGN fishery are released alive. There are no known practicable means to reduce the bycatch levels in the fishery at this time. In the purse seine fishery, measures adopted by NMFS under the Inter-American Tropical Tuna Commission (IATTC) tuna fisheries management program addresses bycatch of juvenile tuna to the extent practicable at this time, though additional research is being pursued to determine if there are additional approaches (e.g., possible use of sidescan sonar to identify small fish prior to making a set) that can help reduce catches of small tuna. No other measures to reduce bycatch or bycatch mortality are determined to be practicable at this time.

*Comment 3:* One comment indicated that the action violates the National Environmental Policy Act (NEPA) because the FEIS for this action lacked full information about, or insufficient analysis of, seabird, marine mammal, sea turtle, and finfish bycatch under the proposed alternatives. In addition, a complete ban on longline and/or DGN gear types was not analyzed as an alternative.

*Response:* On December 22, 2003, NOAA filed with the Environmental Protection Agency the FEIS for the FMP in combination with the ESA rule. On January 2, 2004 (69 FR 69), the notice of availability for the FEIS was published in the **Federal Register**. The FEIS fully analyzes all the alternatives available to the Pacific Council and NMFS, including full analysis of seabird, marine mammal, sea turtle, and finfish bycatch and measures to avoid adverse impacts (and in the case of ESA species, jeopardy) from the fisheries as they would operate under the FMP. At the start of the FMP process, including scoping, the Pacific Council considered such alternatives as eliminating certain gear types, but there was little public interest in or desire for eliminating the DGN fishery or for eliminating the

longline fishery as long as this gear was not permitted within the U.S. EEZ. Therefore, the Pacific Council did not further evaluate total elimination of these gears as the Pacific Council concluded these were not reasonable alternatives in its documents.

*Comment 4:* One comment indicated that current information shows that there are better seabird avoidance gear modifications and techniques than those in the FMP, which proposes the measures required for Hawaii-based longline vessels fishing under the FMP for the Western Pacific Pelagics FMP. This comment also indicated that the Migratory Bird Treaty Act (MBTA) imposes obligations on U.S. fishers, and the FMP does not meet those obligations.

*Response:* The information provided by the reviewer on seabird avoidance gear is from recent targeted studies and was not available to the Pacific Council during FMP development. The information will be provided to the Pacific Council for future consideration. The comment does not indicate what provisions of the MBTA have been violated; no violations are apparent to NMFS. This statute does not apply beyond the Territorial Sea of the U.S., and HMS fisheries occur almost exclusively beyond the Territorial Sea.

*Comment 5:* One comment indicated that the FMP might result in duplication of, or conflicts with, existing international agreements such as under the Tuna Conventions Act, and noted that the majority of the waters through which north Pacific albacore tuna migrate are out of the Pacific Council's jurisdiction. On a related theme, another comment recommended that the proposal to include tuna as managed species be disapproved because (a) unilateral management cannot be effective and (b) the FMP could result in serious harm to U.S. fisheries. This comment also suggests that the Council process is not suited to considering the international aspects of management of tuna fisheries and tuna stocks.

*Response:* NMFS does not anticipate any duplication or conflicts with international programs. Measures recommended by the IATTC and approved by the U.S. Department of State will continue to be implemented under the Tuna Conventions Act, 16 U.S.C. 951 *et seq.* The FMP will not affect implementation of the U.S.-Canada Albacore Treaty as amended or affect fishing under that Treaty. The FMP will not affect implementation of the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific if and when that agreement is ratified by the U.S. In

fact, the data collected under the FMP through logbooks and observer programs should provide better factual support to the U.S. in its activities in these international bodies. Similarly, the Council management process involves broad public involvement with transparent decision making and is, therefore, a good vehicle for the U.S. Department of State and NMFS to obtain advice on issues and opportunities for international collaboration to resolve issues. Further, the FMP notes that the ability to take management action under the Tuna Conventions Act (and later statutes to implement other treaties) is very limited and falls short of the authority needed and available under the Magnuson-Stevens Act for addressing domestic fishery problems. For example, the Tuna Conventions Act would not authorize regulation of any U.S. fisheries without recommendations from the IATTC.

*Comment 6:* One comment urged NMFS to take a stronger role in advocating international agreements for the protection of leatherback turtles killed by foreign fishermen targeting swordfish.

*Response:* NMFS is actively promoting international action for sea turtle conservation, both through international organizations and conventions and through direct discussions with other nations. For example, reduction of sea turtle takes and mortalities is a major new issue in the IATTC, where NMFS is supporting strong action to deal with this problem. NMFS is also aggressively distributing information about the results of its experimentation with new longline gear and techniques to reduce sea turtle takes and mortality. Actions taken to implement the FMP and the companion ESA rule demonstrate that the U.S. is actively regulating its own fisheries even as it promotes international collaboration.

*Comment 7:* One comment urged that NMFS use flexibility to reduce a burdensome time and area closure for the drift gill net fishery; the reviewer felt this closure was unnecessary and not supportable.

*Response:* The FMP proposed that current drift gill net fishery regulations be continued but under Magnuson-Stevens Act authority. The action to approve, disapprove, or disapprove in part the FMP is not an appropriate mechanism for implementing the requested change, which is beyond the scope of the Council proposals. The Council is the appropriate body for considering the request, and the views provided will be forwarded to the Pacific Council for its use.

*Comment 8:* One comment addressed the economic impacts of the NMFS decision to approve most of the FMP and then possibly impose the additional ESA rule. That comment indicated that the ESA rule would effectively eliminate the West Coast longline fishery as it was dependent on swordfish and would not be able to survive targeting tuna or other species.

*Response:* NMFS recognizes that the longline fishery is likely to be severely curtailed if not eliminated, at least in the short term, if both rules were finalized. NMFS acknowledges that it does not expect that longline fishing for species (e.g., tuna) other than swordfish will provide a profitable fishery based on current information. However, NMFS also believes that there may be alternatives available to the longline fishers in the future. First, NMFS is currently considering a proposal from the Western Pacific Fishery Management Council that would alleviate much of the burden for longline vessels fishing out of Hawaii. That proposal effectively would reopen longline fishing for swordfish by vessels registered for use under western Pacific longline limited entry permits. If approved, this would provide an alternative fishing opportunity for most West Coast vessels, whose owners would be able to register their vessels for use under western Pacific longline limited entry permits. Second, NMFS research has demonstrated that longline fishing may be sufficiently protective of sea turtles if certain gear and bait combinations are required, especially if adopted with additional controls on overall fishing effort. The PFMC will be encouraged to explore the possible adoption of such measures to alleviate the burden placed on the West Coast fleet for the short term. In this context, it is noted that the fishery is generally at a low level in the summer and early fall, and the PFMC may be able to fashion an effective regulatory regime by the end of 2004. However, no changes have been made to the final rule at this time to respond to this comment.

*Comment 9:* A large number of letters and faxes were received supporting the proposed FMP and urging its approval. Most of these letters supported the proposal not to allow longline fishing in the EEZ due to bycatch and protected species interaction concerns. One letter specifically objected to the provision of the proposed FMP to allow longline fishing for swordfish outside the EEZ and east of 150° W. long.

*Response:* The FMP was approved as submitted with the exception of the provision allowing longline fishing for

swordfish east of 150° W. long. The final rule reflects that decision.

### Changes From the Proposed Rule

After consideration of public comments and other considerations, the following changes have been made from the proposed rule.

1. The term of permits in the final rule has been changed from the 5 years originally proposed to 2 years. A review of experience in other fisheries and other regions demonstrates that a permit period of 2 years or less is more effective in ensuring accurate information about patterns of fishery participation and the names and addresses of participants in the fisheries. A 5-year permit term would result in a high probability that changes in vessel names and owners and interests of related businesses will not be reported or recorded. In turn, NMFS might be unable to advise interested parties be adequately of changes in management measures or in permit and reporting requirements in the future. Further, the permit term will be staggered so that there will be less likelihood of an extreme permit renewal burden at any one time of the year. This is more efficient for NMFS and more likely to result in delivery of new permits to the fishers in a timely manner.

2. The final rule clearly establishes that initial permit decisions are made by the Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS. This was inadvertently not discussed in the proposed rule. The final rule also includes a provision for appeals of permit decisions to the Regional Administrator. Experience in other permit programs indicates a need for an appeal process to review decisions that applicants believe are incorrect or based on inappropriate interpretation of facts.

3. A provision has been added to the final rule to require that longline vessel operators or owners contact the Southwest Region, NMFS, or a designated agent, prior to departure on a fishing trip. This requirement is identical to a provision in the rules implementing the Western Pacific Pelagics FMP. It is expected that the provision in the ESA rule discussed above that prohibits shallow longline sets will result in a low level of longline fishing because swordfish sets will be prohibited and sets targeting tuna are not expected to support a profitable fishery, at least for most of the year. NMFS has little information about the extent to which such fishing will result in interactions with sea turtles or other bycatch problems, and intends to place

observers when available to ensure collection of this needed information when the opportunity arises. This provision will not become effective until Paperwork Reduction Act approval has been received.

4. The final rule includes a provision that permits, once issued, be on board vessels and available for inspection by an authorized agent unless the vessel was at sea when the permit was issued, in which case the permit must be on board the vessel on the next trip. This was inadvertently omitted from the proposed rule.

5. A new provision was added to § 660.712 to cross-reference the prohibition of shallow swordfish sets by longline vessels being implemented at 50 CFR Part 223. This will clearly indicate that operators of longline vessels managed under this subpart are subject to the provisions of the regulations in 50 CFR 223 if they plan to use longline gear in waters beyond the EEZ and east of 150° W. long. This is necessary to ensure that the fishing vessel operators do not construe the absence of the prohibition in the final rule implementing the FMP to mean that such sets would be permitted.

6. The vessel marking requirement has been changed to be consistent with regulations for other fisheries issued under the Magnuson-Stevens Act and to recognize the differing features of different size vessels. The final rule requires markings of 18 inches (45.7 cm) or greater for vessels 65 ft (20 m) in length or greater; and markings of 10 inches (25.4 cm) or greater for vessels less than 65 ft (20 m) length.

7. The final rule clarifies that a vessel is prohibited from fishing without an observer on board when the vessel owner or operator has been advised of the requirement to carry an observer.

8. The final rule contains a new § 660.720 to establish temporary provisions to limit longline fishing by West Coast vessels operating on the high seas of the Pacific Ocean west of 150° W. long. These interim measures will expire with the implementation of the permit requirements of § 660.707 and the longline fishery control measures in § 660.712. It is necessary to implement these temporary provisions to ensure that excessive sea turtle takes do not occur from unlimited longline fishing before the effective date of those permit requirements.

9. A number of technical changes were made for clarity and to correct errors in the proposed rule. Section 660.703 was revised to indicate that the management area includes all waters where vessels subject to this subpart may fish. With this change, the

definition of fishery management area in § 660.702 was deleted as it was unnecessary. The procedures for processing permit applications and issuing permits under § 660.707 have been clarified and tied to approval of the Paperwork Reduction Act clearance request. The language detailing reporting requirements under § 660.708 has been revised to more clearly describe the extent to which use of existing logbooks satisfy reporting requirements under this subpart and to tie the requirements to approval of the Paperwork Reduction Act clearance request for this collection.

#### Classification

This final rule is implementing the approved portions of the FMP that were found to be consistent with the national standards of the Magnuson-Stevens Act and other applicable laws

The Pacific Council prepared and submitted the final FMP in the form of a final environmental impact statement. NOAA prepared addendum materials to reflect the decision to partially approve the FMP and to implement additional ESA regulations. These addendum materials were filed along with the final Pacific Council document as a Final Environmental Impact Statement that satisfies NEPA requirements for documentation and analysis of the impacts on the human environment of the fisheries as they would operate under the FMP. The FEIS was filed with the Environmental Protection Agency on December 22, 2003, and is available from the Southwest Region, NMFS (*see ADDRESSES*).

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

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that described the economic impact this rule, if implemented, would have on small entities. No comments were received on any aspect of the IRFA. One comment on the proposed rule addressed the economic impacts of the proposed rule and is addressed in the response to Comment 8 of this final rule. NMFS then prepared a FRFA for this final rule. The FRFA is available from NMFS (*see ADDRESSES*). A summary of the FRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and in the **SUPPLEMENTARY INFORMATION** portions of this final rule. A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of \$3.5 million. For related fish-processing businesses,

the SBA considers a small business to be one that employs 500 or fewer persons. For marinas and charter/party boats, the SBA considers a small business to be one with annual receipts not in excess of \$5.0 million. Fishing vessels targeting HMS and some businesses that support harvesters (especially buyers of swordfish from longline vessels) are expected to be the only types of small entities directly impacted by the proposed actions. The total number of vessels is estimated to be about 1,337, broken down as follows:

Purse Seine 27  
Surface Hook-and-Line 887  
Drift Gillnet 121  
Longline 20  
Harpoon 32  
Charter 250  
Total 1,337

In addition, approximately 100 small businesses are involved with the fisheries as processors and buyers of fish taken in HMS fisheries. None of their activities will be regulated under the FMP. The regulatory actions under the FMP that would result in a reduction in domestic landings of HMS are expected to be offset at the processor level by imports at comparative prices. None of the regulatory alternatives considered were expected to add to the costs or reduce revenues of marinas and charter boats. No comments were received directly addressing the IRFA, but one comment addressed the economic impacts of the NMFS decision to approve most of the FMP and then impose the additional ESA rule. That comment indicated that the added rule would effectively eliminate the West Coast longline fishery as it was dependent on swordfish and would not be able to survive targeting tuna or other species. NMFS recognizes that this is a likely result in the short term.

NMFS considered and evaluated a wide range of alternatives in the RIR/FRFA (*see ADDRESSES*), including not implementing the FMP, specifying different mixes of gears and species in the management unit, and deferring immediate regulations, as well as considering different types of regulations, for the drift gillnet and longline fisheries. NMFS concluded that the provisions in this final rule are necessary and appropriate for effective conservation and management of the HMS fisheries.

The final rule establishes regulations for 5 commercial fishing fleets and a fleet of recreational charter vessels. Each fleet has its own gear requirements, each has a differential impact on ocean resources, and each has different economic circumstances. The final rule defines commercial legal HMS gear as

harpoon, surface hook and line, drift gillnet of at least 14 inch (35.56 cm) stretched mesh or greater, purse seine, and pelagic longline. The FMP authorizes rod and reel, spear, and hook and line as recreational gear. The principal economic effects are on the drift gillnet and longline fishing fleets.

An alternative for drift gillnet gear was to allow stretched mesh less than 14 inches (35.56 cm). The selected alternative of requiring 14 inch (35.56 cm) stretched mesh or larger for legal drift gillnet gear is consistent with the historic use of drift gillnet used to target swordfish and sharks. Fishermen estimated that there may be as many as 8–10 vessels that occasionally use small-mesh drift gillnets when albacore and bluefin tuna are available. Landings data indicate that there could be as many as 20 vessels that might have fished small-mesh drift gillnets based on landing receipts for drift gillnet vessels landing albacore and bluefin tuna, but not swordfish. Vessels fishing small mesh drift gillnet gear would be restricted to landing HMS only as an incidental catch. The economic impact on the four vessels that have been documented as using small mesh drift gillnets amounts to between 20 percent and 48 percent of gross receipts. These vessels landed between 1.0 and 15.0 mt of albacore and 0.0 to 3.0 mt of bluefin tuna during the 2001 season. The vessels might make up for the lost revenue through other small mesh gillnet fisheries or simply return to using large mesh nets because all four vessels also currently possess permits for use of the larger mesh gear. Vessels currently fishing large mesh nets would suffer no economic loss under this alternative as they would not need to modify their gear or current fishing practices. The opportunity for albacore surface hook-and-line vessels to deploy small mesh drift gillnet gear to target albacore while on overnight trips would be preempted under this alternative. Loss of this opportunity would prevent realization of potential efficiency gains

from landing more albacore per unit of time on the water.

For drift gillnet vessels using 14 (35 cm) inch stretched mesh or greater, the FMP adopts all Federal conservation and management measures in place under the MMPA and ESA; adopts all state regulations for drift gillnet fishing under Magnuson-Stevens Act authority, except limited entry programs, which will remain under state authority; modifies an Oregon closure inside 1000 fathoms to be in effect year round; closes U.S. EEZ waters off Washington to all drift gillnet vessels; and implements turtle protection closures north of Point Sur, CA to 45° N. lat. (August 15 to November 15), and south of Pt. Conception to 120° W. long. during a forecasted or occurring El Nino event (June, July, and August). Existing Federal and state regulations, including current state drift gillnet time-area closures and gear restrictions were deemed appropriate for adopting. However, the Pacific Council concluded that implementing the existing state limited entry programs, which would significantly increase Federal costs and administrative burdens, was premature. Closures off Washington and Oregon are intended to protect the common thresher shark, sea turtles and marine mammals. This action modifies the current state regulations to prohibit, year round, drift gillnet fishing for swordfish and sharks in U.S. EEZ waters off Oregon east of a line approximating the 1,000 fm curve (deleting an existing May-August prohibition within 75 nautical miles) and prohibits drift gillnet fishing in all U.S. EEZ waters off Washington. The State of Washington currently does not allow the use of drift gillnet gear and Oregon does not allow drift gillnets to target thresher shark, although drift gillnet vessels have fished off both states and landed their catch in California.

Approximately 64 vessels actively participate in the drift gillnet fishery off the U.S. West Coast (see table below). All of these vessels would be considered

small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

With respect to longline fishing, the final rule prohibits the use of pelagic longline gear in the U.S. EEZ. This action continues the *de facto* longline prohibition throughout the U.S. EEZ by states' regulations and minimizes potential bycatch of fish and protected species, and reduces fishery competition problems. There are no vessels participating in a pelagic longline fishery within the U.S. EEZ off the U.S. West Coast. Oregon is the only state that allows pelagic longlining within the U.S. EEZ on a case by case basis, and no landings have occurred. All of the Oregon vessels would be considered small businesses under the SBA standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

Financial impacts of each pelagic longline regulatory alternative considered for adoption within the U.S. EEZ were evaluated based on incremental changes from the status quo; *i.e.*, the difference between pelagic longline ex-vessel private profits under the proposed action and pelagic longline private profits under the status quo. Because there are no empirical financial data available for this fishery, comparisons are based on the application of economic theory to potential fishing opportunities arising from the regulatory alternatives. The following table reports the estimated incremental qualitative changes in short-run financial profits for vessels for each regulatory alternative relative to the status quo. Financial impacts are evaluated as the present value of changes in short-run financial profits over a 25 year time period discounted at 7 percent and 4 percent discount rates. The annual average change in short-run financial profits is also shown.



Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25-Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Pelagic Longline w/in the U.S. EEZ Alternative 1: Current state measures would remain in place under states' authorities and there would be no new Federal regulations governing longline use in the U.S. EEZ. (Status Quo/No Action)	NC	NC
Pelagic Longline w/in the U.S. EEZ Alternative 2: Establishes a general prohibition on the use of pelagic longline gear in the U.S. EEZ. (Final rule action)	NC	NC
Pelagic Longline w/in the U.S. EEZ Alternative 3: Prohibits longlining within the West Coast U.S. EEZ by indefinite moratorium, with the potential for re-evaluation by the Council following completion of a bycatch reduction research program with pre-established strict protocols. Must prove negligible impact on protected and bycatch species.	NQ+	NQ+
Pelagic Longline w/in the U.S. EEZ Alternative 4: Authorizes a limited entry pelagic longline fishery for tunas and swordfish within the U.S. EEZ, with effort and area restrictions, to evaluate longline gear as an alternative to DGN gear to reduce bycatch or bycatch mortality and protected species interactions.	NQ+	NQ+
Pelagic Longline w/in the U.S. EEZ Alternative 5: Prohibits longlining within the West Coast U.S. EEZ with the potential for re-evaluation by the Council following completion of a tuna-swordfish-bycatch research experiment carried out under a qualified EFP to determine if longline gear can be fished in ways that produce bycatch and protected species interaction levels that are significantly less than by drift gillnets ( $\alpha=0.05$ ).	NQ+	NQ+

There are not expected to be any financial impacts associated with Alternative 2 because it essentially represents the status quo. It would have eliminated the Oregon longline fishery, authorized outside 25 miles under the State's developmental fisheries program permit system. However, there are no active Oregon permits at the present time. This alternative would also eliminate the potential opportunity now available to West Coast based commercial fishermen for fishing off Oregon and California and landing in Oregon, which is currently not being exercised. The other alternatives offered potential increases in financial profits if it could be scientifically determined that there would not be an adverse impact on bycatch and protected species interactions.

Beyond the U.S. EEZ, the final rule applies to West Coast-based longline vessels all of the restrictions applied to Hawaii-based longline vessels when fishing west of 150° W. long. Restrictions control sea turtle and seabird interactions and improve monitoring of the fishery. A total of 38 vessels participated in the West Coast-based, high seas pelagic longline fishery during 2001. All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

Financial impacts of each high seas pelagic longline regulatory alternative considered were evaluated based on incremental changes from the status

quo; *i.e.*, the difference between pelagic longline ex-vessel private profits under the proposed action and pelagic longline private profits under the no action alternative. The table below reports the estimated incremental changes in short-run financial profits for pelagic longline vessels for each regulatory alternative relative to the status quo. Financial impacts are evaluated as the present value of changes in short-run financial profits projected over a 25 year time period, discounted at 7 percent and 4 percent discount rates. The annual average change in short-run financial profits is also shown. The changes in financial profit were estimated using cost and earnings data voluntarily provided by industry members.

Under the status quo, regulations would not be promulgated to implement the FMP measures for the high seas, West Coast-based pelagic longline fishery. Fishing could continue without regulations until regulations are established under other authorities. Therefore, without the FMP, the future of the West Coast-based pelagic longline fishery operating on the high seas was expected to be different from recent conditions. Swordfish is the target species of this fishery, and swordfish sets would likely be prohibited; gear restrictions (no light sticks, minimum depth of sets, line clippers to release sea turtles) would apply; and seabird avoidance methods would be required. Longline fishing targeting tuna on the high seas out of West Coast ports might then be an alternative if swordfish targeting is prohibited, but current

participants in the fishery indicate that without being able to target swordfish, the high seas longline fishery originating from West Coast ports would cease to exist. In view of this likelihood, the estimated financial impacts relative to Alternative 1 assumed that (absent action through this final rule) regulations are likely in the future that would prohibit West Coast-based pelagic longliners from targeting swordfish on the high seas, and that under those circumstances the fishery would cease to exist. Alternative 2, however, would have allowed the fishery to continue under selected restrictions, and the financial impact of Alternative 2, shown below, is based on a projection of current private profits in the fishery. Estimates of current private profits do not include the private costs that might be incurred in adopting turtle and seabird saving measures, placement of observers, and the installation and use of VMS, and any lost revenues from being unable to fish in waters bounded by 15° N. lat. and the equator and by 145° W. long. and 180° W. long. during April and May. Therefore, private profits under Alternative 2 in the table below may be overstated. While some West Coast-based, high seas pelagic longliners harvest species other than swordfish, no attempt was made to evaluate potential changes in fishing strategies by these vessels in response to different harvest opportunities under each of the regulatory alternatives, and what this would mean in terms of operating costs and ex-vessel revenues under alternative fishing strategies. Alternative 3 (the action being taken in

this final rule) prohibits swordfish targeting in all waters by U.S. West Coast longline vessels. Under this

alternative, it is expected that the fishery would cease in the long run, in

which case there is no difference from the status quo.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25-Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
High Seas Pelagic Longline Alternative 1: States' regulations would apply to longline fishing and landings and Federal regulations may be developed under other authorities. Vessels would have to obtain HSFCA permits and file HSFCA logbooks, as is now the case. (Status Quo/No Action)	NC	NC
High Seas Pelagic Longline Alternative 2: Applies to West Coast-based longline vessels fishing west of 150° W longitude all of the restrictions applied to Hawaii-based longline vessels, but east of 150° W long., applies selected restrictions, allowing West Coast-based vessels to target swordfish east of that line. (Proposed Action)	\$78,225,581	\$6,712,558
7 percent Discount Rate	\$105,645,527	
4 percent Discount Rate		
High Seas Pelagic Longline Alternative 3: Applies to West Coast-based longline vessels all conservation and management measures applied to Hawaii-based longline vessels to control sea turtle and seabird interactions and to monitor the fishery in all waters (final rule action).		NC
7 percent Discount Rate	NC	
4 percent Discount Rate	NC	

Alternative 2 would have maintained the fishery, but imposed some slight additional costs on West Coast-based longliners targeting swordfish on the high seas. Fishermen would have incurred some of the cost of adopting turtle and seabird saving measures, accommodating observers and using monitoring equipment such as a vessel monitoring system. Therefore, under Alternative 2 there would have been a slight reduction in annual short-run, financial profits from those reported above. There may also have been reductions in swordfish catch rates due to the alternative of turtle and seabird mitigation measures. This could have further reduced short-run, financial profits. In the absence of this rule, the fishery would likely have been subject to regulations promulgated under other authorities, which would be expected to result in the longline fishery's disappearance in time. This is reflected in the long-term status quo, Alternative 1, where financial profits become zero with a phase out of the fishery. In the near term however, the fishery could persist under existing state regulations, in which case short-run financial profits would be expected to be \$6.8 million per year under the status quo. These are the same as the annual average financial profits that would be expected under Alternative 2 minus the cost of adopting turtle and seabird saving measures, accommodating observers and using monitoring equipment such as vessel monitoring systems. Short and long-term profits would disappear under

Alternative 3 with the prohibition on targeting swordfish. Therefore, in the long term, Alternative 3 is the same as the status quo. As noted above, all of the longline vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

The actions in the final rule were selected because they best meet the requirements of the Magnuson-Stevens Act and the ESA. Continuation of the drift gillnet rules under Magnuson-Stevens Act authority will facilitate timely management of the fishery in a public process with necessary protection for marine mammals and sea turtles. Allowing swordfish targeting without additional controls would result in fishing that appreciably reduced the likelihood of survival and recovery in the wild of loggerhead sea turtles, a species listed as threatened under the ESA. Prohibiting swordfish targeting was necessary to avoid jeopardy to this species. Other alternatives that were considered would not have provided the necessary protection to sea turtles.

NMFS also believes that there are or may be in the near term alternatives available to the longline fishers. First, NMFS is considering a proposal that would alleviate much of the burden for longline vessels fishing out of Hawaii. That proposal effectively would reopen longline fishing for swordfish by vessels registered for use under western Pacific

longline limited entry permits. If approved, this would provide an alternative fishing opportunity for most West Coast vessels, whose owners would be able to register their vessels for use under western Pacific longline limited entry permits. Second, NMFS research has demonstrated that longline fishing may be sufficiently protective of sea turtles if certain gear and bait combinations are required, especially if adopted with additional controls on overall fishing effort. The Pacific Council will be encouraged to explore the possible adoption of such measures to alleviate the burden placed on the West Coast fleet for the short term. In this context, it is noted that the fishery is generally at a low level in the summer and early fall, and the Pacific Council may be able to fashion an effective regulatory regime by the end of 2004. However, no changes have been made to the final rule at this time. The action would impose new reporting and recordkeeping requirements for some HMS vessels. Application forms for permits must be confirmed and/or completed by owners seeking permits for all commercial gears and charter vessels. All commercial vessels and charter vessels must maintain and submit logbooks of catch and effort in the fisheries. State logbooks may satisfy this requirement, and this final rule includes a requirement that vessel owners and operators comply with all applicable regulations requiring reports to state agencies. A pre-trip notification is required for longline vessels. Also,

longline vessels must have vessel monitoring system units on their vessels, provided by and installed at NMFS expense.

No specific actions have been taken to minimize the economic impacts on owners and operators of West Coast longline vessels, as there are no alternatives available that will meet the requirements of the Magnuson-Stevens Act and the ESA. The ESA requires that activities that would jeopardize the continued existence of any species listed under that act be prohibited or curtailed. All the alternatives that allowed swordfish targeting by longline vessels would fail to meet the test of the ESA and therefore would violate the Magnuson-Stevens Act. The original proposal to prohibit swordfish targeting west of 150° W. long. and allow it east of 150° W. long. resulted in a jeopardy conclusion under the ESA. There is reason to believe that adjustments (such as gear and bait requirements) can be made in the future management program that will alleviate the burden and allow the West Coast longline fishery to resume, albeit perhaps at a lower level. It will take some time, however, to develop and implement any such changes in management. No adjustments are needed for other fishery sectors as there are minimal economic impacts from the final rule.

This FMP contains collection-of-information requirements for 6 separate fisheries subject to review and approval by OMB under the PRA. These requirements have been submitted to OMB for approval. The public reporting burden for these requirements is estimated to average 20–35 minutes for a permit application depending on the extent of correction of information on application forms and of new information to be submitted on those forms; 5 minutes for a pre-trip notification by longline vessel operators; and 45 minutes to affix the official number of a vessel to its bow and weather deck. In addition, for longline vessels, there would be a burden of 4 hours for installation of a vessel monitoring system, 2 hours for maintenance of the system, 24 seconds for each electronic report submitted via the satellite based vessel monitoring system; and 5 minutes for filling out a log each day. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility, the accuracy of the burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and ways to minimize the burden of the collection of information, including through the use of automated information technology. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to, Svein Fougner, Assistant Administrator for Sustainable Fisheries, NMFS, Southwest Region (see **ADDRESSES**) and by e-mail to *David\_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number.

This final rule is consistent with the ESA. A formal consultation with NMFS Protected Resources under the ESA was initiated on September 23, 2003. Based on the conclusions of the consultation, the Regional Administrator determined that fishing activities under this final rule, when considered in combination with a rule being promulgated under the authority of the ESA, would not jeopardize the continued existence of any species. Consultations were also completed with the U.S. Fish and Wildlife Service (USFWS), which concluded that the fisheries would not jeopardize the continued existence of any listed species under the USFWS jurisdiction.

The Regional Administrator determined that fishing activities conducted under this final rule would have no adverse impacts on marine mammals.

#### List of Subjects in 50 CFR

##### Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

##### Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

##### Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: March 25, 2004.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR parts 223, 224, and 660, are amended as follows:

#### 50 CFR Chapter VI

#### PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

##### § 223.206 [Amended]

■ 2. In § 223.206, paragraph (d)(6) is removed and reserved.

#### PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 4. In § 224.104, paragraph (c) is revised to read as follows:

##### § 224.104 Special requirements for fishing activities to protect endangered sea turtles.

\* \* \* \* \*

(c) Special prohibitions relating to sea turtles are provided at § 223.206 (d)(2)(iv).

#### PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 5. The authority citation for part 660 continues to read as follows:

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

6. Add Subpart K to read as follows:

#### Subpart K—Highly Migratory Fisheries

Sec.

660.701	Purpose and scope.
660.702	Definitions.
660.703	Management area.
660.704	Vessel identification.
660.705	Prohibitions.
660.706	Pacific Coast Treaty Indian rights.
660.707	Permits.
660.708	Reporting and recordkeeping.
660.709	Annual specifications.
660.710	Closure of directed fishery.
660.711	General catch restrictions.
660.712	Longline fishery.
660.713	Drift gillnet fishery.
660.714	Purse seine fishery. [Reserved.]
660.715	Harpoon fishery. [Reserved.]
660.716	Surface hook-and-line fishery. [Reserved.]
660.717	Framework for revising regulations.
660.718	Exempted fishing.

660.719 Scientific observers.  
660.720 Interim protection for sea turtles.

### Subpart K—Highly Migratory Fisheries

#### § 660.701 Purpose and scope.

This subpart implements the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP). These regulations govern commercial and recreational fishing for HMS in the U.S. EEZ off the coasts of Washington, Oregon, and California and in adjacent high seas waters.

#### § 660.702 Definitions.

*Basket-style longline gear* means a type of longline gear that is divided into units called *baskets*, each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

*Closure*, when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited.

*Commercial fishing* means:

(1) Fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, retaining, possessing, landing and/or sale of fish; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

*Commercial fishing gear* includes the following types of gear and equipment used in the highly migratory species fisheries:

(1) Harpoon. Gear consisting of a pointed dart or iron attached to the end of a pole or stick that is propelled only by hand and not by mechanical means.

(2) Surface hook-and-line. Fishing gear, other than longline gear, with one or more hooks attached to one or more lines (includes troll, rod and reel, handline, albacore jig, live bait, and bait boat). Surface hook and line is always attached to the vessel.

(3) Drift gillnet. A panel of netting, 14 inch (35.5 cm) stretched mesh or greater, suspended vertically in the water by floats along the top and weights along the bottom. A drift gillnet is not stationary or anchored to the bottom.

(4) Purse seine. An encircling net that may be closed by a purse line threaded through the bottom of the net. Purse

seine gear includes ring net, drum purse seine, and lampara nets.

(5) Pelagic longline. A main line that is suspended horizontally in the water column and not stationary or anchored, and from which dropper lines with hooks (gangions) are attached. Legal longline gear also includes basket-style longline gear.

*Council* means the Pacific Fishery Management Council, including its Highly Migratory Species Management Team (HMSMT), Scientific and Statistical Committee (SSC), Highly Migratory Species Advisory Subpanel (HMSAS), and any other committee established by the Council.

*Fishing trip* is a period of time between landings when fishing is conducted.

*Fishing year* is the year beginning at 0801 GMT (0001 local time) on April 1 and ending at 0800 GMT on March 31 (2400 local time) of the following year.

*Harvest guideline* means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery.

*Highly Migratory Species (HMS)* means species managed by the FMP, specifically:

*Billfish/Swordfish:*

striped marlin (*Tetrapturus audax*)

swordfish (*Xiphias gladius*)

*Sharks:*

common thresher shark (*Alopias vulpinus*)

pelagic thresher shark (*Alopias pelagicus*)

bigeye thresher shark (*Alopias*

*superciliosus*)

shortfin mako or bonito shark (*Isurus*

*oxyrinchus*)

blue shark (*Prionace glauca*)

*Tunas:*

north Pacific albacore (*Thunnus alalunga*)

yellowfin tuna (*Thunnus albacares*)

bigeye tuna (*Thunnus obesus*)

skipjack tuna (*Katsuwonus pelamis*)

northern bluefin tuna (*Thunnus orientalis*)

*Other:*

dorado or dolphinfish (*Coryphaena hippurus*)

*Highly Migratory Species Advisory Subpanel (HMSAS)* means the individuals comprised of members of the fishing industry and public appointed by the Council to review proposed actions for managing highly migratory species fisheries.

*Highly Migratory Species Fishery Management Plan (FMP)* means the Fishery Management Plan for the U.S. West Coast Fisheries for Highly Migratory Species developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce and amendments to the FMP.

*Highly Migratory Species Management Team (HMSMT)* means the individuals appointed by the Council to review, analyze, and develop

management measures for highly migratory species fisheries.

*Incidental catch or incidental species* means HMS caught while fishing for the primary purpose of catching other species with gear not authorized by the FMP.

*Land or landing* means offloading fish from a fishing vessel or arriving in port to begin offloading fish or causing fish to be offloaded from a fishing vessel.

*Mesh size* means the opening between opposing knots in a net. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot when the mesh is stretched, regardless of twine size.

*Offloading* means removing HMS from a vessel.

*Permit holder* means a permit owner.

*Permit owner* means a person who owns an HMS permit for a specific vessel fishing with specific authorized fishing gear.

*Person, as it applies to fishing conducted under this subpart*, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

*Processing or to process* means the preparation or packaging of HMS to render it suitable for human consumption, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting or freezing at sea unless additional preparation is done.

*Prohibited species* means those species and species groups whose retention is prohibited unless authorized by other applicable law (for example, to allow for examination by an authorized observer or to return tagged fish as specified by the tagging agency).

*Quota* means a specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.

*Recreational charter vessel* means a vessel that carries fee-paying passengers for the purpose of recreational fishing.

*Recreational fishing* means fishing with authorized recreational fishing gear for personal use only and not for sale or barter.

*Regional Administrator* means the Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, or a designee.

*Special Agent-In-Charge* (SAC) means the Special Agent-In-Charge, NMFS, Office of Enforcement, Southwest Region, or a designee of the Special Agent-In-Charge.

*Sustainable Fisheries Division* (SFD) means the Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, or his or her designee.

*Tranship* means offloading or otherwise transferring HMS or products thereof to a receiving vessel.

*Vessel monitoring system unit* (VMS unit) means the hardware and software equipment owned by NMFS, installed on vessels by NMFS, and required by this subpart K to track and transmit the positions from fishing vessels.

#### § 660.703 Management area.

The fishery management area for the regulation of fishing for HMS has the following designations and boundaries:

(a) Southern boundary—the United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35'22" N. lat. 117°27'49" W. long.  
32°37'37" N. lat. 117°49'31" W. long.  
31°07'58" N. lat. 118°36'18" W. long.  
30°32'31" N. lat. 121°51'58" W. long.

(b) Northern boundary—the United States-Canada Provisional International Boundary, which is a line connecting the following coordinates:

48°29'37.19" N. lat. 124°43'33.19" W. long.

48°30'11" N. lat. 124°47'13" W. long.  
48°30'22" N. lat. 124°50'21" W. long.  
48°30'14" N. lat. 124°54'52" W. long.  
48°29'57" N. lat. 124°59'14" W. long.  
48°29'44" N. lat. 125°00'06" W. long.  
48°28'09" N. lat. 125°05'47" W. long.  
48°27'10" N. lat. 125°08'25" W. long.  
48°26'47" N. lat. 125°09'12" W. long.  
48°20'16" N. lat. 125°22'48" W. long.  
48°18'22" N. lat. 125°29'58" W. long.  
48°11'05" N. lat. 125°53'48" W. long.  
47°49'15" N. lat. 126°40'57" W. long.  
47°36'47" N. lat. 127°11'58" W. long.  
47°22'00" N. lat. 127°41'23" W. long.  
46°42'05" N. lat. 128°51'56" W. long.  
46°31'47" N. lat. 129°07'39" W. long.

(c) Adjacent waters on the high seas in which persons subject to this subpart may fish.

#### § 660.704 Vessel identification.

(a) *Official number*. Each fishing vessel subject to this subpart must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals*. The official number must be affixed to each vessel subject to this subpart in block Arabic numerals at

least 10 inches (25.40 cm) in height for vessels more than 25 ft (7.62 m) but equal to or less than 65 ft (19.81 m) in length; and 18 inches (45.72 cm) in height for vessels longer than 65 ft (19.81 m) in length. Markings must be legible and of a color that contrasts with the background.

#### § 660.705 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for HMS in the U.S. EEZ off the Pacific coast without a permit issued under § 660.707 for the use of authorized fishing gear.

(b) Fish with gear in any closed area specified in this subpart that prohibits the use of such gear.

(c) Land HMS at Pacific coast ports without a permit issued under § 600.707 for the use of authorized fishing gear.

(d) Sell HMS without an applicable commercial state fishery license.

(e) When fishing for HMS, fail to return a prohibited species to the sea immediately with a minimum of injury.

(f) Falsify or fail to affix and maintain vessel markings as required by § 660.704.

(g) Fish for HMS in violation of any terms or conditions attached to an exempted fishing permit issued under § 600.745 of this chapter.

(h) When a directed fishery has been closed for a specific species, take and retain, possess, or land that species after the closure date.

(i) Refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(j) Falsify or fail to make and/or file any and all reports of fishing, landing, or any other activity involving HMS, containing all data, and in the exact manner, required by the applicable state law, as specified in § 660.708(b).

(k) Fail to carry aboard a vessel that vessel's permit issued under § 660.707 or exempted fishing permit issued under § 660.718, except if the permit was issued while the vessel was at sea.

(l) Fail to carry a VMS unit as required under § 660.712(d).

(m) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same; or to move or remove a VMS unit without the prior permission of the SAC.

(n) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit.

(o) Fish for, catch, or harvest HMS with longline gear without a VMS unit

on board the vessel after installation of the VMS unit by NMFS.

(p) Possess on board a vessel without a VMS unit HMS harvested with longline gear after NMFS has installed the VMS unit on the vessel.

(q) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear deployed west of 150° W. long. and north of the equator (0° lat.) on a vessel registered for use of longline gear in violation of § 660.712(a)(1).

(r) Possess a light stick on board a longline vessel when fishing west of 150° W. long. and north of the equator (0° lat.) in violation of § 660.712(a)(6)

(s) Possess more than 10 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing west of 150° W. long. and north of the equator (0° lat.) in violation of § 660.712(a)(9).

(t) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit.

(u) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer.

(v) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC.

(w) Fish for HMS with a vessel registered for use of longline gear within closed areas or by use of unapproved gear configurations in violation of § 660.712(a)(2), (a)(3), (a)(7), (a)(8), or (a)(9).

(x) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline when operating a vessel that is registered for use of longline gear and equipped with monofilament main longline, when making deep sets north of 23° N. lat. in violation of § 660.712(c)(1)(i) and (c)(1)(ii).

(y) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use of longline gear north of 23° N. lat. in violation of § 660.712(c)(1)(iii).

(z) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use of longline gear that is fishing north of 23° N. lat., in violation of § 660.712(c)(2) and (c)(3).

(aa) Fail to retain, handle, and discharge fish, fish parts, and spent bait strategically when operating a vessel registered for use of longline gear that is fishing north of 23° N. lat. in violation of § 660.712(c)(4) through (c)(7).

(bb) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-

term survival, in violation of § 660.712(c)(8).

(cc) Fail to handle seabirds other than short-tailed albatross that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival in violation of § 660.712(c)(17).

(dd) Own a longline vessel registered for use of longline gear that is engaged in longline fishing for HMS without a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.712(e)(3).

(ee) Fish for HMS on a vessel registered for use of longline gear without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.712(e).

(ff) Fail to carry line clippers, dip nets, and wire or bolt cutters on a vessel registered for use as a longline vessel in violation of § 660.712(b).

(gg) Fail to comply with sea turtle handling, resuscitation, and release requirements specified in § 660.712(b)(4) through (7) when operating a vessel.

(hh) Fail to comply with seabird take mitigation or handling techniques required under § 660.712(c)

(ii) Fish for HMS with a vessel registered for use as a longline vessel without being certified by NMFS for completion of an annual protected species workshop as required under § 660.712(e).

(jj) Fail to notify the Regional Administrator at least 24 hours prior to departure on a fishing trip using longline gear as required under § 660.712(f).

(kk) Except when fishing under a western Pacific longline limited entry permit issued under § 660.21, direct fishing effort toward the harvest of swordfish or fail to have and use gear in waters west of 150° W. long. in violation of § 660.720.

(ll) Except when fishing under a western Pacific longline limited entry permit issued under § 660.21, possess a light stick on board a longline vessel on the high seas of the Pacific Ocean west of 150° W. long. north of the equator in violation of § 660.720 (a)(iii).

(mm) Except when fishing under a western Pacific longline limited entry permit issued under § 660.21, possess more than 10 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing on the high seas of the Pacific Ocean west of 150° W. long. north of the equator in violation of § 660.720 (a)(iii).

(nn) Except when fishing under a western Pacific longline limited entry

permit issued under § 660.21, fail to employ basket-style longline gear such that the mainline is deployed slack when fishing on the high seas of the Pacific Ocean west of 150° W. long. north of the equator, in violation of § 660.720 (a)(iv).

(oo) Except when fishing under a western Pacific longline limited entry permit issued under § 660.21, when a conventional monofilament longline is deployed by a vessel subject to this section, deploy fewer than 15 branch lines between any two floats, in violation of § 660.720 (a)(v). Vessel operators using basket-style longline gear may not set less than 10 branch lines between any 2 floats when fishing in waters west of 150° W. long. north of the equator.

(pp) Except when fishing under a western Pacific longline limited entry permit issued under § 660.21, fail to deploy longline gear such that the deepest point of the main longline between any two floats, *i.e.*, the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface, in violation of § 660.720 (a)(vi).

#### § 660.706 Pacific Coast Treaty Indian rights.

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest HMS in their usual and accustomed (u&a) fishing areas in U.S. waters.

(b) Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) NMFS recognizes the following areas as marine u&a fishing grounds of the four Washington coastal tribes. The Makah u&a grounds were adjudicated in *U.S. v. Washington*, 626 F.Supp. 1405, 1466 (W.D. Wash. 1985), affirmed 730 F.2d 1314 (9th Cir. 1984). The u&a grounds of the Quileute, Hoh, and Quinault tribes have been recognized administratively by NMFS (*See, e.g.*, 64 FR 24087 (May 5, 1999) (u&a grounds for groundfish); 50 CFR 300.64(i) (u&a grounds for halibut)). The u&a grounds recognized by NMFS may be revised as ordered by a Federal court.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary of Commerce, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written

request from a Pacific Coast treaty Indian tribe to the NMFS Northwest Regional Administrator, at least 120 days prior to the time the allocation is desired to be effective, and will be subject to public review through the Council process. The Secretary of Commerce recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary of Commerce will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

(e) *Identification.* A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is prima facie evidence that the holder is a member of the Pacific Coast treaty Indian tribe named on the card.

(f) Fishing (on a tribal allocation or under a Federal regulation applicable to tribal fisheries) by a member of a Pacific Coast treaty Indian tribe within that tribe's u&a fishing area is not subject to provisions of the HMS regulations applicable to non-treaty fisheries.

(g) Any member of a Pacific Coast treaty Indian tribe must comply with any applicable Federal and tribal laws and regulations, when participating in a tribal HMS fishery implemented under paragraph (d) of this section.

(h) Fishing by a member of a Pacific Coast treaty Indian tribe outside that tribe's u&a fishing area, or for a species of HMS not covered by a treaty allocation or applicable Federal regulation, is subject to the HMS regulations applicable to non-treaty fisheries.

#### § 660.707 Permits.

(a) *General.* This section applies to vessels that fish for HMS off or land HMS in the States of California, Oregon, and Washington.

(1) A commercial fishing vessel of the United States must be registered for use under a HMS permit that authorizes the use of specific gear, and a recreational charter vessel must be registered for use under a HMS permit if that vessel is used:

(i) To fish for HMS in the U.S. EEZ off the States of California, Oregon, and Washington; or

(ii) To land or transship HMS shoreward of the outer boundary of the U.S. EEZ off the States of California, Oregon, and Washington.

(2) The permit must be on board the vessel and available for inspection by an authorized officer, except that if the permit was issued while the vessel was at sea, this requirement applies only to any subsequent trip.

(3) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(4) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) an HMS permit.

(b) *Application.* (1) Following publication of the final rule implementing the FMP, NMFS will issue permits to the owners of those vessels on a list of vessels obtained from owners previously applying for a permit under the authority of the High Seas Fishing Compliance Act, the Tuna Conventions Act of 1950, the Marine Mammal Protection Act, and the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region, or whose vessels are listed on the vessel register of the Inter-American Tropical Tuna Commission.

(2) All permits issued by NMFS in accordance with paragraph (b)(1) of this section will authorize the use of specific fishing gear by the identified commercial fishing vessels.

(3) An owner of a vessel subject to these requirements who has not received an HMS permit from NMFS and who wants to engage in the fisheries must apply to the SFD for the required permit in accordance with the following:

(i) A Southwest Region Federal Fisheries application form may be obtained from the SFD or downloaded from the Southwest Region home page (<http://swr.nmfs.noaa.gov/permits.htm>) to apply for a permit under this section. A completed application is one that contains all the necessary information and signatures required.

(ii) A minimum of 15 days should be allowed for processing a permit application. If an incomplete or improperly completed application is filed, the applicant will be sent a notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(iii) A permit will be issued by the SFD. If an application is denied, the SFD will indicate the reasons for denial.

(iv) *Appeals.* (A) Any applicant for an initial permit may appeal the initial issuance decision to the RA. To be considered by the RA, such appeal must be in writing and state the reasons for the appeal, and must be submitted within 30 days of the action by the RA. The appellant may request an informal hearing on the appeal.

(B) Upon receipt of an appeal authorized by this section, the RA will

notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal.

(C) Upon receipt of sufficient information, the RA will decide the appeal in accordance with the permit provisions set forth in this section at the time of the application, based upon information relative to the application on file at NMFS and the Council and any additional information submitted to or obtained by the RA, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as the RA deems appropriate. The RA will notify all interested persons of the decision, and the reasons for the decision, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(D) If a hearing is requested, or if the RA determines that one is appropriate, the RA may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing to the applicant. The appellant, and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the RA.

(E) The RA may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the RA will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The RA's decision will constitute the final administrative action by NMFS on the matter.

(F) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the RA for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.

(4) Permits issued under this subpart will remain valid until the first date of renewal, and permits may subsequently be renewed for 2-year terms. The renewal date will be the last day of the month designated by the last digit of the vessel identification number (e.g., if the vessel identification number ends in 3, the renewal date is March 31, 2 years later). The first renewal requirement will occur after the first year of the

initial permit but before the end of the second year of the initial permit.

(5) Replacement permits may be issued without charge to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(6) Any permit that has been altered, erased, or mutilated is invalid.

(c) *Display.* Any permit issued under this subpart, or a facsimile of the permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing HMS shoreward of the outer boundary of the fishery management area unless the vessel was at sea at the time the permit was issued. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

(d) *Sanctions.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904.

#### **§ 660.708 Reporting and recordkeeping.**

(a) *Logbooks.* The operator of any commercial fishing vessel and any recreational charter vessel fishing for HMS in the management area must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Administrator or a state agency. All information specified on the forms must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to either the Regional Administrator or the appropriate state management agency within 30 days of each landing or transshipment of HMS. Each form must be signed and dated by the fishing vessel operator.

(1) Logbooks that meet the logbook reporting requirement may be found at <http://swr.nmfs.noaa.gov/logbooks.htm> and include:

(i) The logbook required under 50 CFR 300.21 implementing the Tuna Conventions Act of 1950;

(ii) The logbook required under § 660.14 implementing the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region;

(iii) The logbook required by 50 CFR 300.17 implementing the High Seas Fishing Compliance Act of 1995.

(iv) Any logbook required by the fishery management agency of the States of California, Oregon, or Washington.

(2) Any holder of a permit who does not submit logbooks under any of the above authorities must submit a written request to the SFD for the appropriate logbook. The applicant must provide his or her name and address, the name of

the vessel, and the type of fishing gear used.

(3) The Regional Administrator may, after consultation with the Council, act to modify the information to be provided on the fishing record forms.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports of HMS containing all data, and in the exact manner, required by the applicable state law.

#### § 660.709 Annual specifications.

(a) *Procedure.* (1) In June of each year, the HMSMT will deliver a preliminary SAFE report to the Council for all HMS with any necessary recommendations for harvest guidelines, quotas or other management measures to protect HMS.

(2) In September of each year, the HMSMT will deliver a final SAFE report to the Council. The Council will adopt any necessary harvest guidelines, quotas or other management measures for public review.

(3) In November each year, the Council will take final action on any necessary harvest guidelines, quotas, or other management measures and make its recommendations to NMFS.

(4) The Regional Administrator will implement through rulemaking any necessary and appropriate harvest guidelines, quotas, or other management measures based on the SAFE report, recommendations from the Council, and the requirements contained in the FMP.

(b) Fishing seasons for all species will begin on April 1 of each year at 0001 hours local time and terminate on March 31 of each year at 2400 hours local time.

(c) Harvest guidelines, quotas, and other management measures announced for a particular year will be in effect the following year unless changed through the public review process described in paragraph (a) of this section.

(d) Irrespective of the normal review process, the Council may propose management action to protect HMS at any time. The Council may adopt a management cycle different from the one described in this section provided that such change is made by a majority vote of the Council and a 6-month notice of the change is given. NMFS will implement the new schedule through rulemaking.

#### § 660.710 Closure of directed fishery.

(a) When a quota has been taken, the Regional Administrator will announce in the **Federal Register** the date of closure of the fishery for the species of concern.

(b) When a harvest guideline has been taken, the Regional Administrator will

initiate review of the species of concern according to section 8.4.8 of the FMP and publish in the **Federal Register** any necessary and appropriate regulations following Council recommendations.

#### § 660.711 General catch restrictions.

(a) Prohibited species. HMS under the FMP for which quotas have been achieved and the fishery closed are prohibited species. In addition, the following are prohibited species:

- (1) Any species of salmon.
- (2) Great white shark.
- (3) Basking shark.
- (4) Megamouth shark.
- (5) Pacific halibut.

(b) *Incidental landings.* HMS caught by gear not authorized by this subpart may be landed in incidental amounts as follows:

(1) Drift gillnet vessels with stretched mesh less than 14 inches may land up to 10 HMS per trip, except that no swordfish may be landed.

(2) Bottom longline vessels may land up to 20 percent by weight of management unit sharks in landings of all species, or 3 individual sharks of the species in the management unit, whichever is greater.

(3) Trawl and pot gear vessels may land up to 1 percent by weight of management unit sharks in a landing of all species or 2 individual sharks of the species in the management unit, whichever is greater.

(c) *Marlin prohibition.* The sale of striped marlin by a vessel with a permit under this subpart is prohibited.

(d) *Sea turtle handling and resuscitation.* All sea turtles taken incidentally in fishing operations by any HMS vessel other than vessels subject to § 660.712 must be handled in accordance with 50 CFR 223.206(d)(1).

#### § 660.712 Longline fishery.

(a) *Gear and fishing restrictions.* (1) Owners and operators of vessels registered for use of longline gear may not use longline gear to fish for or target HMS within the U.S. EEZ.

(2) Owners and operators of vessels registered for use of longline gear may not make shallow sets with longline gear to fish for or target swordfish (*Xiphias gladius*) west of 150° W. long. and north of the equator (0° N. lat.).

(3) A person aboard a vessel registered for use of longline gear fishing for HMS west of 150° W. long. and north of the equator (0° N. lat.) may not possess or deploy any float line that is shorter than or equal to 20 m (65.6 ft or 10.9 fm). As used in this paragraph, float line means a line used to suspend the main longline beneath a float.

(4) From April 1 through May 31, owners and operators of vessels

registered for use of longline gear may not use longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long.

(5) From April 1 through May 31, owners and operators of vessels registered for use of longline gear may not receive from another vessel HMS that were harvested by longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long.

(6) From April 1 through May 31, owners and operators of vessels registered for use of longline gear may not land or transship HMS that were harvested by longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long.

(7) No light stick may be possessed on board a vessel registered for use of longline gear during fishing trips that include any fishing west of 150° W. long. and north of the equator (0° N. lat.). A light stick as used in this paragraph is any type of light emitting device, including any fluorescent glow bead, chemical, or electrically powered light that is affixed underwater to the longline gear.

(8) When a conventional monofilament longline is deployed in waters west of 150° W. long. and north of the equator (0° N. lat.) by a vessel registered for use of longline gear, no fewer than 15 branch lines may be set between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats when fishing in waters north of the equator.

(9) Longline gear deployed west of 150° W. long. and north of the equator (0° N. lat.) by a vessel registered for use of longline gear must be deployed such that the deepest point of the main longline between any two floats, *i.e.*, the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

(10) Owners and operators of longline vessels registered for use of longline gear may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing west of 150° W. long. and north of the equator (0° N. lat.).

(11) Owners and operators of longline vessels registered for use of longline gear are subject to the provisions at 50 CFR part 223 prohibiting shallow sets to target swordfish in waters beyond the U.S. EEZ and east of 150° W. long. and establishing that no more than 10 swordfish may be landed by a longline



vessel registered for use of longline gear from a trip if any sets of longline gear were made on that trip in those waters.

(b) *Sea turtle take mitigation measures.* (1) Owners and operators of vessels registered for use of longline gear must carry aboard their vessels line clippers meeting the minimum design standards specified in paragraph (b)(2) of this section, dip nets meeting minimum standards specified in paragraph (b)(3) of this section, and wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in paragraphs (b)(4) through (b)(7) of this section.

(2) Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper (ALC) is a model line clipper that meets these minimum design standards and may be fabricated from readily available and low-cost materials (see figure 1 to § 660.32). The minimum design standards are as follows:

(i) The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(ii) The blade must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(iii) The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(iv) The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(3) Dip nets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that minimizes injury and trauma to sea turtles. The minimum design standards for dip nets that meet the requirements of this section are:

(i) The dip net must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion.

(ii) The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh

openings may be no more than 3 inches x 3 inches (7.62 cm x 7.62 cm).

(4) All incidentally taken sea turtles brought aboard for dehooking and/or disentanglement must be handled in a manner to minimize injury and promote post-hooking survival.

(i) When practicable, comatose sea turtles must be brought on board immediately, with a minimum of injury, and handled in accordance with the procedures specified in paragraphs (b)(5) and (b)(6) of this section.

(ii) If a sea turtle is too large or hooked in such a manner as to preclude safe boarding without causing further damage/injury to the turtle, line clippers described in paragraph (b)(2) of this section must be used to clip the line and remove as much line as possible prior to releasing the turtle.

(iii) If a sea turtle is observed to be hooked or entangled by longline gear during hauling operations, the vessel operator must immediately cease hauling operations until the turtle has been removed from the longline gear or brought on board the vessel.

(iv) Hooks must be removed from sea turtles as quickly and carefully as possible. If a hook cannot be removed from a turtle, the line must be cut as close to the hook as possible.

(5) If the sea turtle brought aboard appears dead or comatose, the sea turtle must be placed on its belly (on the bottom shell or plastron) so that the turtle is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. A reflex test, performed by gently touching the eye and pinching the tail of a sea turtle, must be administered by a vessel operator, at least every 3 hours, to determine if the sea turtle is responsive. Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance may be placed into a container holding water. A water-soaked towel placed over the eyes, carapace, and flippers is the most effective method to keep a turtle moist. Those that revive and become active must be returned to the sea in the manner described in paragraph (b)(6) of this section. Sea turtles that fail to revive within the 24-hour period must also be returned to the sea in the manner described in paragraph (b)(6)(i) of this section.

(6) Live turtles must be returned to the sea after handling in accordance with the requirements of paragraphs (b)(4) and (b)(5) of this section:

(i) By putting the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped, and releasing the turtle away from deployed gear; and

(ii) Observing that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

(7) In addition to the requirements in paragraphs (b) and (c) of this section, a vessel operator shall perform sea turtle handling and resuscitation techniques consistent with 50 CFR 223.206(d)(1), as appropriate.

(c) *Longline Seabird mitigation measures.* (1) Seabird mitigation techniques. Owners and operators of vessels registered for use of longline gear must ensure that the following actions are taken when fishing north of 23° N. lat.:

(i) Employ a line setting machine or line shooter to set the main longline when making deep sets west of 150° W. long, using monofilament main longline;

(ii) Attach a weight of at least 45 g to each branch line within 1 m of the hook when making deep sets using monofilament main longline;

(iii) When using basket-style longline gear, ensure that the main longline is deployed slack to maximize its sink rate;

(2) Use completely thawed bait that has been dyed blue to an intensity level specified by a color quality control card issued by NMFS;

(3) Maintain a minimum of two cans (each sold as 0.45 kg or 1 lb size) containing blue dye on board the vessel;

(4) Discharge fish, fish parts (offal), or spent bait while setting or hauling longline gear, on the opposite side of the vessel from where the longline gear is being set or hauled;

(5) Retain sufficient quantities of fish, fish parts, or spent bait, between the setting of longline gear for the purpose of strategically discharging it in accordance with paragraph (a)(6) of this section;

(6) Remove all hooks from fish, fish parts, or spent bait prior to its discharge in accordance with paragraph (c)(4) of this section; and

(7) Remove the bill and liver of any swordfish that is caught, sever its head from the trunk and cut it in half vertically, and periodically discharge the butchered heads and livers in accordance with paragraph (a)(6) of this section.

(8) If a short-tailed albatross is hooked or entangled by a vessel registered for use of longline gear, owners and operators must ensure that the following actions are taken:

(i) Stop the vessel to reduce the tension on the line and bring the bird on board the vessel using a dip net;

(ii) Cover the bird with a towel to protect its feathers from oils or damage while being handled;

(iii) Remove any entangled lines from the bird;

(iv) Determine if the bird is alive or dead.

(A) If dead, freeze the bird immediately with an identification tag attached directly to the specimen listing the species, location and date of mortality, and band number if the bird has a leg band. Attach a duplicate identification tag to the bag or container holding the bird. Any leg bands present must remain on the bird. Contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop, inform them that you have a dead short-tailed albatross on board, and submit the bird to NMFS within 72 hours following completion of the fishing trip.

(B) If alive, handle the bird in accordance with paragraphs (c)(9) through (c)(14) of this section.

(9) Place the bird in a safe enclosed place;

(10) Immediately contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop and request veterinary guidance;

(11) Follow the veterinary guidance regarding the handling and release of the bird.

(12) Complete the short-tailed albatross recovery data form issued by NMFS.

(13) If the bird is externally hooked and no veterinary guidance is received within 24–48 hours, handle the bird in accordance with paragraphs (c)(17)(iv) and (v) of this section, and release the bird only if it meets the following criteria:

(i) Able to hold its head erect and respond to noise and motion stimuli;

(ii) Able to breathe without noise;

(iii) Capable of flapping and retracting both wings to normal folded position on its back;

(iv) Able to stand on both feet with toes pointed forward; and

(v) Feathers are dry.

(14) If released under paragraph (c)(13) of this section or under the guidance of a veterinarian, all released birds must be placed on the sea surface.

(15) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS

immediately upon the vessel's return to port. Do not give the bird food or water.

(16) Complete the short-tailed albatross recovery data form issued by NMFS.

(17) If a seabird other than a short-tailed albatross is hooked or entangled by a vessel registered for use of longline gear, owners and operators must ensure that the following actions are taken:

(i) Stop the vessel to reduce the tension on the line and bring the seabird on board the vessel using a dip net;

(ii) Cover the seabird with a towel to protect its feathers from oils or damage while being handled;

(iii) Remove any entangled lines from the seabird;

(iv) Remove any external hooks by cutting the line as close as possible to the hook, pushing the hook barb out point first, cutting off the hook barb using bolt cutters, and then removing the hook shank;

(v) Cut the fishing line as close as possible to ingested or inaccessible hooks;

(vi) Leave the bird in a safe enclosed space to recover until its feathers are dry; and

(vii) After recovered, release seabirds by placing them on the sea surface.

(d) *Vessel monitoring system.*

(1) Only a VMS unit owned by NMFS and installed by NMFS complies with the requirement of this subpart.

(2) After the holder of a permit to use longline gear has been notified by the SAC of a specific date for installation of a VMS unit on the permit holder's vessel, the vessel must carry the VMS unit after the date scheduled for installation.

(3) A longline permit holder will not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directly to requirements under this section. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility of the owner or operator and not NMFS.

(4) The holder of a longline permit and the master of the vessel operating under the permit must:

(i) Provide opportunity for the SAC to install and make operational a VMS unit after notification.

(ii) Carry the VMS unit on board whenever the vessel is at sea.

(iii) Not remove or relocate the VMS unit without prior approval from the SAC.

(5) The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a

computer, to any VMS unit when deemed appropriate by the SAC.

(e) *Protected species workshop.* (1) Each year both the owner and the operator of a vessel registered for use of longline gear must attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species.

(2) A protected species workshop certificate will be issued by NMFS annually to any person who has completed the workshop.

(3) An owner of a vessel registered for use of longline gear must have on file a valid protected species workshop certificate or copy issued by NMFS in order to maintain or renew their vessel registration.

(4) An operator of a vessel registered for use of longline gear must have on board the vessel a valid protected species workshop certificate issued by NMFS or a legible copy thereof.

(f) An operator of a vessel registered for use of longline gear must notify the Regional Administrator at least 24 hours prior to embarking on a fishing trip regardless of the intended area of fishing.

(g) An operator of a vessel registered for use of longline gear in waters east of 150° W. long. and beyond the EEZ is subject to the requirements at 50 CFR part 223.

#### § 660.713 Drift gillnet fishery.

(a) *Take Reduction Plan gear restrictions.* Gear restrictions resulting from the Pacific Offshore Cetacean Take Reduction Plan established under the authority of the Marine Mammal Protection Act of 1972 can be found at 50 CFR 229.31.

(b) *Other gear restrictions.* (1) The maximum length of a drift gillnet on board a vessel shall not exceed 6,000 ft (1828 m).

(2) Up to 1,500 ft (457 m) of drift gillnet in separate panels of 600 ft (182.88 m) may be on board the vessel in a storage area.

(c) *Protected Resource Area closures.*

(1) Pacific leatherback conservation area. No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean from August 15 through November 15 in the area bounded by straight lines connecting the following coordinates in the order listed:

(i) Pt. Sur at 36° 18.5' N. lat., to

(ii) 34° 27' N. lat. 123° 35' W. long.,

to

(iii) 34° 27' N. lat. 129° W. long., to

(iv) 45° N. lat. 129° W. long., thence

to

(v) the point where 45° N. lat. intersects the Oregon coast.

(2) *Pacific loggerhead conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. meridian from June 1 through August 31 during a forecasted, or occurring, El Nino event off the coast of southern California.

(i) The Assistant Administrator will publish a notification in the **Federal Register** that an El Nino event is occurring off, or is forecast for off, the coast of southern California and the requirement for time area closures in the Pacific loggerhead conservation zone. The notification will also be announced in summary form by other methods as the Assistant Administrator determines necessary and appropriate to provide notice to the California/Oregon drift gillnet fishery.

(ii) The Assistant Administrator will rely on information developed by NOAA offices that monitor El Nino events, such as NOAA's Coast Watch program, and developed by the State of California, to determine if such a notice should be published. The requirement for the area closures from January 1 through January 31 and from August 15 through August 31 will remain effective until the Assistant Administrator issues a notice that the El Nino event is no longer occurring.

(d) *Mainland area closures.* The following areas off the Pacific coast are closed to driftnet gear:

(1) Within the U.S. EEZ from the United States-Mexico International Boundary to the California-Oregon border from February 1 through April 30.

(2) In the portion of the U.S. EEZ within 75 nautical miles from the mainland shore from the United States-Mexico International Boundary to the California-Oregon border from May 1 through August 14.

(3) In the portion of the U.S. EEZ within 25 nautical miles of the coastline from December 15 through January 31 of the following year from the United States-Mexico International Boundary to the California-Oregon border.

(4) In the portion of the U.S. EEZ from August 15 through September 30 within the area bounded by line extending from Dana Point to Church Rock on Santa Catalina Island, to Point La Jolla, CA.

(5) In the portion of the U.S. EEZ within 12 nautical miles from the mainland shore north of a line extending west of Point Arguello, CA, to the California-Oregon border.

(6) In the portion of the U.S. EEZ within the area bounded by a line from the lighthouse at Point Reyes to

Nooday Rock, to Southeast Farallon Island to Pillar Point, CA.

(7) In the portion of the U.S. EEZ off the Oregon coast east of a line approximating 1000 fathoms as defined by the following coordinates:

42° 00' 00" N. lat. 125° 10' 30" W. long.

42° 25' 39" N. lat. 124° 59' 09" W. long.

42° 30' 42" N. lat. 125° 00' 46" W. long.

42° 30' 23" N. lat. 125° 04' 14" W. long.

43° 02' 56" N. lat. 125° 06' 57" W. long.

43° 01' 29" N. lat. 125° 10' 55" W. long.

43° 50' 11" N. lat. 125° 19' 14" W. long.

44° 03' 23" N. lat. 125° 12' 22" W. long.

45° 00' 06" N. lat. 125° 16' 42" W. long.

45° 25' 27" N. lat. 125° 16' 29" W. long.

45° 45' 37" N. lat. 125° 15' 19" W. long.

46° 04' 45" N. lat. 125° 24' 41" W. long.

46° 16' 00" N. lat. 125° 20' 32" W. long.

(8) In the portion of the U.S. EEZ north of 46° 16' N. latitude (Washington coast).

(e) *Channel Islands area closures.* The following areas off the Channel Islands are closed to driftnet gear:

(1) *San Miguel Island closures.* (i) Within the portion of the U.S. EEZ north of San Miguel Island between a line extending 6 nautical miles west of Point Bennett, CA, and a line extending 6 nautical miles east of Cardwell Point, CA.

(ii) Within the portion of the U.S. EEZ south of San Miguel Island between a line extending 10 nautical miles west of Point Bennett, CA, and a line extending 10 nautical miles east of Cardwell Point, CA.

(2) *Santa Rosa Island closure.* Within the portion of the U.S. EEZ north of San Miguel Island between a line extending 6 nautical miles west from Sandy Point, CA, and a line extending 6 nautical miles east of Skunk Point, CA, from May 1 through July 31.

(3) *San Nicolas Island closure.* In the portion of the U.S. EEZ within a radius of 10 nautical miles of 33° 16' 41" N. lat., 119° 34' 39" W. long. (west end) from May 1 through July 31.

(4) *San Clemente Island closure.* In the portion of the U.S. EEZ within 6 nautical miles of the coastline on the easterly side of San Clemente Island within a line extending 6 nautical miles west from 33° 02' 16" N. lat., 118° 35'

27" W. long. and a line extending 6 nautical miles east from the light at Pyramid Head, CA.

**§ 660.714 Purse seine fishery. [Reserved]**

**§ 660.715 Harpoon fishery. [Reserved]**

**§ 660.716 Surface hook-and-line fishery. [Reserved]**

**§ 660.717 Framework for revising regulations.**

(a) *General.* NMFS will establish and adjust specifications and management measures in accordance with procedures and standards in the FMP.

(b) *Annual actions.* Annual specifications are developed and implemented according to § 660.709.

(c) *Routine management measures.* Consistent with section 3.4 of the FMP, management measures designated as routine may be adjusted during the year after recommendation from the Council, approval by NMFS, and publication in the **Federal Register**.

(d) *Changes to the regulations.* Regulations under this subpart may be promulgated, removed, or revised. Any such action will be made according to the framework measures in section 8.3.4 of the FMP and will be published in the **Federal Register**.

**§ 660.718 Exempted fishing.**

(a) In the interest of developing an efficient and productive fishery for HMS, the Regional Administrator may issue exempted fishing permits (EFP) for the harvest of HMS that otherwise would be prohibited.

(b) No exempted fishing for HMS may be conducted unless authorized by an EFP issued for the participating vessel in accordance with the criteria and procedures specified in 50 CFR 600.745.

**§ 660.719 Scientific observers.**

(a) All fishing vessels with permits issued under this subpart and operating in HMS fisheries, including catcher/processors, at-sea processors, and vessels that embark from a port in Washington, Oregon, or California and land catch in another area, may be required to accommodate an NMFS certified observer on board to collect scientific data.

(b) All vessels with observers on board must comply with the safety regulations at 50 CFR 600.746.

(c) NMFS shall advise the permit holder or the designated agent of any observer requirement in response to any pre-trip notification in this subpart.

(d) When NMFS notifies the permit holder or designated agent of the obligation to carry an observer in response to a notification under this subpart or as a condition of an EFP

issued under 50 CFR 660.718, the vessel may not engage in the fishery without taking the observer.

(e) A permit holder must accommodate a NMFS observer assigned under this section. The Regional Administrator's office, and not the observer, will address any concerns raised over accommodations.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties, including:

(1) Allowing for the embarking and debarking of the observer.

(2) Allowing the observer access to all areas of the vessel necessary to conduct observer duties.

(3) Allowing the observer access to communications equipment and navigation equipment as necessary to perform observer duties.

(4) Allowing the observer access to VMS units to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(5) Providing accurate vessel locations by latitude and longitude or loran coordinates, upon request by the observer.

(6) Providing sea turtle, marine mammal, or sea bird specimens as requested.

(7) Notifying the observer in a timely fashion when commercial fishing operations are to begin and end.

(g) The permit holder, operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Administrator imposes by written notice.

(h) The permit holder must ensure that assigned observers are provided living quarters comparable to crew members and are provided the same meals, snacks, and amenities as are normally provided to other vessel personnel.

**§ 660.720 Interim protection for sea turtles.**

(a) Until the effective date of §§ 660.707 and 660.712 (d) and (e), it is unlawful for any person who is not operating under a Hawaii longline limited access permit under § 660.21(b) to do any of the following:

(1) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear deployed on the high seas of the Pacific Ocean west of 150° W. long. and north of the equator (0° lat.).

(2) Possess a light stick on board a longline vessel on the high seas of the Pacific Ocean west of 150° W. long. north of the equator. A light stick as used in this paragraph is any type of light emitting device, including any

fluorescent glow bead, chemical, or electrically powered light that is affixed underwater to the longline gear.

(3) An operator of a longline vessel subject to this section may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing west of 150° W. long. and north of the equator (0° N. lat.).

(4) Fail to employ basket-style longline gear such that the mainline is deployed slack when fishing on the high seas of the Pacific Ocean west of 150° W. long. north of the equator.

(5) When a conventional monofilament longline is deployed by a vessel subject to this section, no fewer than 15 branch lines may be set between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats when fishing in waters west of 150° W. long. north of the equator.

(6) Longline gear deployed by a vessel subject to this section must be deployed such that the deepest point of the main longline between any two floats, *i.e.*, the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

(b) [Reserved]

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