procedures. Accordingly, the FNPRM seeks comment on an appropriate transition period in the event a shorter porting interval is adopted.

16. Throughout the FNPRM the Commission emphasizes in its request for comment, the individual impacts on carriers as well as the critical competition goals at the core of this proceeding. The Commission will consider all of the alternatives contained not only in the FNPRM, but also in the resultant comments, particularly those relating to minimizing the effect on small businesses.

F. Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules

17. None.

Ex Parte Presentations

18. This is a ''permit but disclose'' proceeding pursuant to § 1.1206 of the Commission's rules. Ex parte presentations that are made with respect to the issues involved in the Petition will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's rules.

19. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filing parties should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, parties should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html.*

20. Parties who choose to file by paper must file an original and four copies of each filing. Each filing should include the applicable docket number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

21. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered diskette filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to: 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, the docket number of this proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

22. Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426 (voice) or (202) 418–7365 (TTY), or at *bmillin@fcc.gov.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30542 Filed 12–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3746; MB Docket No. 03–175; RM–10719]

Radio Broadcasting Services; Rising Star, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: In this document, the Commission dismisses a petition for rule making filed by Charles Crawford (''Petitioner''), requesting the allotment of Channel 290C3 at Rising Star, Texas. *See* 68 FR 47283, August 8, 2003. Petitioner's comments were late-filed with no request to accept on a late-filed basis. Although timely filed, a counterproposal filed by Katherine Pyeatt was dismissed as unacceptable due to a short spacing to a licensed station. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–175, adopted November 21, 2003, and released November 26, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Natek, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–30544 Filed 12–9–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223, 224, and 660

[Docket No. 031125294–3294–01; 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: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement 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.

DATES: Comments must be received by January 26, 2004.

ADDRESSES: Comments should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Copies of the FMP, environmental impact statement (EIS), regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) may be obtained from Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed 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*, or faxed to 202–395–7285.

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

SUPPLEMENTARY INFORMATION: The Pacific Council prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* On January 18, 2002, a notice of availability of a Draft Environmental Impact Statement for the FMP was published in the **Federal Register** (67 FR 2651). The Pacific Council held 7 public hearings on the FMP from January 28, 2002, to February 4, 2002, in the States of Washington, Oregon, and California. At its March 2002 meeting in Sacramento, CA, the Pacific Council reviewed public comments received at the hearings, considered written and oral comments, and adopted preliminary preferred alternatives for some issues, leaving its decision on other alternatives for a future meeting. At its October-November 2002 meeting in Foster City, CA, the Pacific Council adopted all of its preferred alternatives and voted to submit the FMP for Secretarial review.

Among the preferred alternatives was a provision to allow longline fishing targeting swordfish east of 150° W. longitude (long.). Before the final FMP document was submitted, however, NMFS informed the Pacific Council at its March 2003 meeting in Sacramento, CA about potential impacts of the fishery under the preferred alternative on endangered sea turtles. NMFS asked the Pacific Council to delay submission of the FMP to provide time for a rigorous scientific analysis of recently collected observer data, and review of the results by the Pacific Council and its advisory bodies, prior to final completion and submission of the FMP. Those data indicated that take rates of sea turtles in the longline fishery in the eastern Pacific were similar to those in the western Pacific, and if those rates were representative of what could be expected in the fishery, there could be excessive sea turtle takes under the Pacific Council's preferred alternative. At the Pacific Council's June 2003 meeting in Foster City, CA, NMFS presented reports on the catch rates of turtles in the longline fishery and the results of the scientific analysis of the data. NMFS informed the Pacific Council that allowing longline fishing targeting swordfish east of 150° W. long. may not provide sufficient protection to endangered and threatened sea turtles. Therefore, this alternative might not be approved. The Pacific Council then heard reports from its advisory bodies and public comments and concluded that the FMP should be submitted without changing any of its preferred alternatives. The Pacific Council then completed the final FMP and submitted it for Secretarial review. A Notice of Availability of the FMP was published in the **Federal Register** at 68 FR 62763, November 6, 2003.

The FMP that would be implemented by this proposed rule is intended to address concerns about the effect of fishing on highly migratory species (HMS) off the U.S. West Coast and on ocean resources caught incidentally to fishing for HMS. The fish species included in the management unit are tuna (yellowfin, bigeye, skipjack, albacore, and northern bluefin), billfish (striped marlin and swordfish), oceanic sharks (common thresher, bigeye thresher, pelagic thresher, shortfin mako, blue), and dorado (also commonly known as mahi mahi and dolphinfish). Other species ranging throughout the Pacific Ocean throughout the Pacific are taken incidental to fishing for HMS but are not in the management unit. 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. United States fishermen fish HMS in the U.S. exclusive economic zone (U.S. EEZ), in the exclusive economic zones of other nations, and on the high seas.

Marine mammals, sea turtles, and sea birds also are occasionally caught incidental to fishing for HMS by some gear types. The effect on such species of takes by fishing gear is a problem throughout the Pacific Ocean, and the United States has in many cases already taken action under the authority of the Magnuson-Stevens Act, the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) to minimize or mitigate the impact of U.S. fisheries on these resources. The FMP would provide additional protective measures for West Coast HMS fisheries.

The FMP, if approved, would directly impose certain conservation and management measures on the fisheries as well as provide a procedural framework for future management actions that might be necessary as the international and U.S. fisheries change.

Management Unit Species

The FMP is intended to ensure conservation and promote the achievement of optimum yield of those HMS that are defined as management unit species in the FMP. The FMP is designed to conserve HMS throughout their individual ranges, both within and beyond the U.S. EEZ to the extent practicable, recognizing that management authority of all species falls within many jurisdictions. The Pacific Council reviewed 6 alternatives for designating management unit species. As indicated, the proposed species to be managed are striped marlin and swordfish; common, pelagic, and bigeye thresher shark, shortfin mako (bonito) shark), and blue shark; north Pacific albacore, yellowfin, bigeye, skipjack, and northern bluefin

tuna; and dorado. Other groupings of species (e.g., excluding dorado or excluding bigeye and pelagic thresher sharks) are included in the FMP as alternatives to the preferred alternative, and public comment is sought on what species should be in the management unit.

Tuna

Some tuna species are highly productive and are harvested by fishing fleets of many countries. For example, yellowfin and bigeye tuna are harvested by the United States, Mexico, Costa Rica, and other coastal states in Central and South America. Harvest limits for yellowfin and bigeye tuna in the eastern Pacific are set by the Inter-American Tropical Tuna Commission (IATTC) and not by NMFS through the FMP. However, the decisions made by the IATTC regarding harvest limits and the basis for those decisions would be available to the Pacific Council for its review. Opinions of the Pacific Council on international management would be forwarded to the U.S. State Department through NMFS. If allocations among U.S. fishermen became necessary as a result of decisions by the IATTC, the Pacific Council would be the body with the responsibility to make recommendations to NMFS regarding implementation. A similar arrangement would be utilized by NMFS for any fishery in which an international organization is involved. No harvest limits for bluefin tuna, skipjack tuna, or north Pacific albacore are proposed by the FMP at this time, although a maximum sustainable yield for each species of tuna is contained in the FMP. Unilateral harvest limits for these species would have no practical effect, given the international nature of the fisheries for these species and the low portion of total catches for which the U.S. fleet is responsible in most cases. However, if international action to limit harvests is agreed to, then the Pacific Council may play a role in implementing such limits with respect to U.S. fisheries.

Sharks

Most sharks are less productive than other HMS and are vulnerable to overfishing. Although shark species included in the management unit range throughout the Pacific Ocean and are not being overfished, the FMP proposes to adopt harvest limits off the Pacific coast for common thresher of 340 metric tons (mt) and shortfin mako of 150 mt to prevent local depletion. The thresher shark harvest guideline is lower than the recommended harvest limit set in the tri-state fishery management plan for this species developed by the States of California, Oregon, and Washington. The justification for a more conservative approach in the FMP is the result of an analysis of historical harvests explained in Chapter 3 of the FMP, which contains an estimate of a local maximum sustainable yield that is less than that contained in the tri-state plan. No harvest limit is proposed for pelagic thresher shark, bigeye thresher shark or blue shark. Public comment is sought on this approach and whether harvest limits should be placed on other species.

Other Species

No harvest limits are proposed for striped marlin, dorado, or swordfish. Again, unilateral limits for U.S. fisheries would have no beneficial effect, given the international nature of the fisheries and the small share of total catch made by U.S. vessels. Like many HMS, striped marlin off the Pacific coast is at the northern limit of its range off California. The sale of striped marlin would be prohibited to prevent commercial targeting of this species, which has such high value for recreational fisheries. This species has been a target of recreational fisheries for decades. The proposed limit on the sale of marlin contained in the FMP continues a prohibition that has been in California law since the 1930s.

Fishing Gear Employed

HMS are harvested off the West Coast by five commercial gear groups and various recreational fisheries. Under the FMP, the authorized commercial gears are surface hook-and-line, drift gillnet, longline, purse seine, and harpoon. Recreational anglers would be allowed to pursue HMS from commercial passenger fishing vessels and from private boats with hook-and-line gear.

The definition of fishing gear is important because gear not defined in regulations implementing the FMP would not be legal gear. For example, mousetrap gear, which is a free floating hook-and-line gear, is not defined in this proposed rule and would not be legal. Likewise, if a drift gillnet is defined as having a mesh size of at least 14 inches (35.56 cm), which is the proposed action in the FMP, any net with a smaller mesh size would not be legal and could not be fished from Pacific coast ports for HMS. This issue is discussed in section 9.2.4.1 of the FMP and in Major Issues below.

Major Issues

1. Management of Longline Fishery

The preferred alternative with regard to longline fishing is to (1) prohibit longline fishing in the U.S. EEZ; (2) adopt, for longline vessels fishing west of 150° W. long., all of the restrictions that apply to longline vessels fishing with a limited entry permit under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP); and (3) adopt, for longline vessels fishing outside the U.S. EEZ and east of 150° W. long., the same restrictions as those that apply to longline vessels fishing with a limited entry permit under the Pelagics FMP, except that the restrictions that prevent shallow sets for swordfish would not apply.

The restrictions preventing shallow sets for swordfish in the central and western Pacific were designed to reduce the impact on threatened and endangered sea turtles taken incidental to swordfish sets. After being presented with available information on the frequency of sea turtle interactions expected under different fishing scenarios, however, the Pacific Council felt that there was not sufficient information available in the eastern Pacific to justify prohibiting swordfish sets east of 150° W. long. Further, the Pacific Council concluded that it could not reasonably estimate the impacts (reduced sea turtle takes, reduced swordfish catches, etc.) if there were partial limits such as time/area closures. Therefore, the FMP proposes that longline vessels be able to target swordfish in the eastern Pacific east of 150° W. long. These vessels would have to comply with all other restrictions, including the requirements to maintain a vessel monitoring system (VMS) on board the vessel, use line clippers and dip nets for turtle release, and use seabird avoidance gear and techniques as in waters west of 150° W. long., as well as complying with the proper handling of sea turtles and seabirds.

This approach would establish consistency with regulations in waters west of 150° W. long. while minimizing the economic impact on vessels fishing from West Coast ports; however, regulations east of 150° W. long. would be different. This is a serious issue for NMFS. Based on available observer data, NMFS is concerned that allowing shallow sets for swordfish east of 150° W. long. may not comply with the ESA; therefore, this measure is at risk of not being approved.

A formal consultation under section 7 of the ESA has been initiated on the effects of the fisheries as they would

operate under the FMP. The consultation will include a review of the impact of all fishing gear regulated by the FMP, the impact of other domestic fishing fleets as they now operate, and the most recent information on the status and trends of sea turtle populations. A biological opinion will be written, and if a jeopardy conclusion is reached, a reasonable and prudent alternative will be provided to the Pacific Council that will be designed to provide sufficient protection for endangered and threatened sea turtles. Even if there is not a jeopardy conclusion, the biological opinion may include reasonable and prudent measures and conservation recommendations to reduce or mitigate sea turtle interactions. Also, an incidental take statement will be issued that may set terms and conditions on fishing to reduce or mitigate sea turtle interactions. The biological opinion will thus provide NMFS and the Pacific Council with information that could be used to develop framework measures under the FMP that would further address the impact of longline fishing on endangered and threatened sea turtles. Finally, it is noted that the observer coverage anticipated under the FMP will greatly improve the information base for future management actions.

A section 7 consultation also has been initiated concerning the potential impacts of the fisheries under the FMP on other species. The FMP requires that longline fishers use seabird avoidance gear and techniques, as is required for central and western Pacific longline fishers. This consultation is scheduled to end on the same time frame as the consultation with respect to species under NMFS jurisdiction.

2. Management of Drift Gillnet Fishing

Drift gillnet fishing is currently regulated by the states and by regulations implementing the MMPA and the ESA. The preferred alternative in the FMP is to incorporate under Magnuson-Stevens Act authority the gear and time/area closures currently in state and ESA regulations into the regulations implementing the FMP. Therefore, state area closures that extend into the U.S. EEZ are included in this proposed rule. Gear restrictions in state regulations and in NMFS regulations under the ESA to protect sea turtles are included as well. The California limited entry program for drift gillnet gear is not included in this proposed rule because the Pacific Council decided not to address overcapitalization issues at this time; however, the California limited entry program would remain in effect under State of California regulations.

Regulations establishing a Take Reduction Plan for drift gillnet vessels that includes specifications for extender lines and pingers, an acoustical device attached to the net, and skipper education workshops can be found at 50 CFR 229.30 and 229.31. These regulations would remain in effect when the FMP is implemented and would not be moved to the section of the CFR that implements the FMP. However, it is anticipated that the Pacific Council will be provided the opportunity to participate in the Take Reduction Team process to ensure that the Take Reduction Team process and recommendations and the FMP process and actions are carried out in a coordinated manner.

Endangered and threatened sea turtles are defined as fish by the Magnuson-Stevens Act. Area and seasonal closures designed to protect sea turtles in the drift gillnet fishery that are currently in effect at 50 CFR 223.206 would be moved to CFR 660 subpart K. The ESA section 7 consultations will address the impacts of drift gillnet fishing on all listed species.

The FMP defines drift gillnet gear as 14–inch (35.56–cm) stretched mesh or greater. A drift gillnet vessel with a mesh size less than 14 inches (35.56 cm) would not be able to target HMS. An incidental landing of 10 HMS per trip, other than swordfish, would be allowed to minimize bycatch of HMS while fishing for state managed species.

3. Permits

This proposed rule would require all commercial vessels fishing for HMS to obtain a permit with an endorsement for the specific gear to be used. A permit would also be required for all recreational charter vessels and commercial passenger carrying fishing vessels (CPFV) fishing for HMS. Other alternatives analyzed in the FMP include a general permit without a gear specification and a permit system that includes all recreational 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. 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 Pacific 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.

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 Pelagics FMP. In compliance with United States obligations under the Tuna Conventions Act of 1950, NMFS is also providing information to the Inter-American Tropical Tuna Commission (IATTC) for an international vessel register including all U.S. vessels that fish tuna in the eastern Pacific Ocean. Thus, a list of vessels that would likely fall under the jurisdiction of the FMP has been completed by the Southwest Region, NMFS. The regulations propose issuing HMS permits to all individuals on this list. There would be no qualification requirements for a permit. Vessel owners who have not received a permit to harvest HMS by 60 days following the effective date of the final regulations would have to apply for an HMS permit. All vessels would need an HMS permit by January 1, 2005. There would be no cost to fishermen for this permit.

4. Recording and Recordkeeping

The proposed rule would require all commercial and recreational charter vessels and CPFV to maintain a logbook of catch and effort statistics for their HMS fishing under their permits to be submitted to the Regional Administrator following the end of a fishing trip. The proposed rule allows state logbooks to meet the Federal reporting requirement if those logbooks are submitted on time and provide the required information and if the information is available to the Regional Administrator by agreement with that state. Federal logbooks are now required for: vessels fishing on the high seas under the authority of the High Seas Fishing Compliance Act of 1995, vessels fishing tuna under the authority of the Tuna Conventions Act of 1950, and vessels fishing under the authority of the regulations implementing the Pelagics FMP. A Federal logbook for troll vessels fishing albacore, which is currently voluntary,

would be required under the FMP. The State of California requires a logbook for harpoon vessels, drift gillnet vessels, and CPFVs. The State of Oregon requires a logbook for drift gillnet vessels. These state logbooks, which are tailored to specific gear types, would be acceptable under these regulations. Duplicate logbooks would not be required.

5. Bycatch

A number of provisions are included in the FMP to measure and reduce bycatch and to provide better information to assess the amount and type of bycatch in HMS fisheries. The proposed standardized reporting system for bycatch assessment is to initially require that longline, surface hook-and-line, small purse seine fisheries, and recreational charter vessels carry observers when directed by the Regional Administrator. An observer program is already in effect for drift gillnet vessels and longline vessels, though coverage needs to be expanded for the latter. In consultation with the Pacific Council, its advisory bodies, and the fishery participants, NMFS will develop initial observer coverage plans for these fisheries, which will be completed 60 days following approval of the FMP. The observer coverage plans for these fisheries may be adjusted as the initial data is assessed and more is learned about the levels of coverage necessary to obtain statistically reliable data on bycatch in the various fisheries. In the longer term, NMFS will develop observer sampling plans for private recreational vessels to assess potential ways of improving information on managed species and on the quantity of bycatch in recreational fisheries.

The FMP identifies a variety of measures already in effect (e.g., drift gillnet mesh size, time and area closures for certain gear types) to prevent or reduce bycatch and evaluates the practicability of additional bycatch reduction measures.

6. Management Organizations

There is no single, pan-Pacific institution that manages all HMS throughout their ranges. The IATTC adopts conservation measures for yellowfin and bigeye tunas in the eastern Pacific Ocean. Member nations of the IATTC, including the United States, are obligated to implement IATTC conservation measures for their national fisheries. On September 5, 2000, the Convention on Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean was opened for signature by the coastal nations of the western and central Pacific and nations fishing in that region. The Convention has not yet entered into force and has not been ratified by the United States, but it would establish a commission empowered to adopt management measures for HMS throughout their ranges in the central and western Pacific. The IATTC and the new western Pacific commission may play important roles in managing West Coast-based HMS fisheries.

In 1981, the United States and Canada signed the Treaty on Pacific Coast Albacore Tuna Vessels and Port Privileges, which allows fishing vessels of each nation to fish for albacore tuna in waters of the other nation beyond 12 nautical miles. Recently, U.S. albacore fishermen have become concerned about the increased effort by Canadian vessels in U.S. waters and the lack of information on the amount of albacore taken by Canada. The United States engaged in negotiations with Canada on these issues, which resulted in a treaty amendment in July 2002. The United States can promulgate regulations to implement the amended treaty if the U.S. Congress enacts legislation authorizing the promulgation of regulations.

Within the United States, three regional fishery management councils have management responsibility for HMS in the Pacific Ocean: the Pacific, the North Pacific, and the Western Pacific Fishery Management Councils. The Western Pacific Fishery Management Council manages highly migratory species in the central and western Pacific under the authority of the Pelagics FMP. Many of the same stocks of HMS are harvested in separate jurisdictions. In some cases vessels are fishing in the same areas but landing in different jurisdictions, where there may be different management objectives and management measures.

Effective management of HMS in the Pacific will require the Pacific Council to be fully informed of management actions being considered in the international organizations affecting HMS and will require the Pacific Council to coordinate its activities with the Western Pacific Fishery Management Council and North Pacific Fishery Management Council. Although management objectives may differ in the respective areas, consistency is expected to be achieved by NMFS to meet the requirements of the Magnuson-Stevens Act while giving full consideration to local needs.

7. 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. Measures to prevent jeopardy and minimize the impacts on these species have been implemented through regulations under the authority of the MMPA and the ESA. Area closures and special equipment apply to drift gillnet vessels. There is much less information about the extent or nature of interactions with sea turtles and seabirds by vessels engaged in purse seine fishing for tuna, harpoon fishing for swordfish, and trolling for albacore. However, available information indicates that interactions are very rare. The FMP mandates observer coverage to ensure a sound scientific basis for determinations of interactions and impacts and consideration of management adjustments if necessary and appropriate. It is possible that additional data will show that other fishing gear used to harvest highly migratory species has an impact in protected species. 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. The FMP includes framework procedures by which the Pacific Council can consider the need for additional actions as new information becomes available, e.g., observer data demonstrating a protected species interaction problem. The framework process explicitly includes the potential for action to conserve and protect species of special concern.

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 Assistant Administrator under the authority of the ESA. The Pacific Offshore Cetacean Take Reduction Team established under the MMPA reviews fishery and observer data and provides guidance to NMFS on actions needed to protect marine mammals. The Southwest Regional Administrator will provide these reports to the Pacific Council for recommendations on whether and how best to implement any necessary measures. If appropriate, the Pacific Council will utilize the

framework processes in the FMP to address these issues to the extent FMP regulations are appropriate. This process does not prevent the AA from taking action under the authority of the MMPA and the ESA independent of the Pacific Council process.

The Pacific Council submitted draft regulations with the FMP as required by the Magnuson-Stevens Act. While technical changes have been made for clarity and compliance with requirements of the Office of the **Federal Register**, no substantive changes in the regulations have been made.

Classification

At this time, NMFS has not determined that the FMP this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Pacific Council prepared the FMP in the format of a final environmental impact statement (FEIS) consistent with the National Environmental Protection Act (NEPA). NOAA expects to file the FEIS with the Environmental Protection Agency after Secretarial review of the FMP has begun but before final action to approve, disapprove, or disapprove in part the FMP. The FMP contains a framework management process that facilitates timely implementation of management measures by the Pacific Council without amending the FMP. This will allow the Pacific Council and NMFS to act quickly to address resource conservation issues. Maximum sustainable yield is established for all managed species to ensure compliance with the Magnuson-Stevens Act, although some species are also managed by international organizations and come within the jurisdiction of other fishery management councils. Consistency of management to ensure effective conservation and management is a goal of the FMP. Harvest limits are established for common thresher and mako shark to prevent local depletion. Although highly migratory, evidence indicates that local depletion of these sharks can occur and would have an impact on these species and the fisheries involved. To protect endangered turtles and protected seabirds, the FMP makes regulations governing longline fishing from West Coast ports consistent with the rules established for longline vessels fishing out of Hawaii, when West Coast vessels are fishing west of 150° W. long.; therefore, all U.S. fishermen must adhere to the same conservation measures in these waters regardless of jurisdiction. However, in waters east of 150° W. long., West Coast longline vessels would not be subject to the same limitation as western Pacific vessels. The impacts of this approach, both with respect to implications for effective management and with respect to ESA issues, will be fully evaluated through the review of the FMP and the section 7 consultations described above. Rules governing drift gillnet fishing issued under the authority of the ESA are incorporated in the FMP. Incorporating rules in the FMP issued under other authorities will ensure wider public review of management issues and broader analysis. Permit and reporting requirements of the FMP build on existing programs to obtain sufficient information needed for management while minimizing duplication.

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

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

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, a small business is one that employs 500 or fewer persons. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $5.0 million.

Fishing vessels targeting HMS are expected to be the only types of small entities directly impacted by the proposed actions. Any regulatory action 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 initial regulatory alternatives considered are expected to add to the costs or reduce revenues of marinas and charter/party boats. Only the permit and logbook requirements described below would add additional reporting.

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and elsewhere in the **SUPPLEMENTARY INFORMATION** of this proposed rule and are not repeated here.

The FMP proposes management of 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 FMP authorizes 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. An alternative for drift gillnet gear was to allow stretched mesh less than 14 inches (35.56 cm).

The proposed alternative of requiring 14–inch (35.56–cm) stretched mesh or larger 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. There could be as many as 20 vessels that might have fished small-mesh drift gillnets at one time or another, 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 nets with 14–inch (35.56–cm) or greater stretched mesh, 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 the states' 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 includes provisions (as in current ESA regulations) to establish a turtle protection closure north of Point

Sur, CA to 45° N. lat. from August 15 to November 15, and south of Pt. Conception, CA to 120° W. long. during a forecasted or occurring El Nino event in the months of 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 incorporating under MSA authority the existing state limited entry programs would significantly increase Federal costs and administrative burdens and was premature. The Pacific Council may consider limited entry under the FMP in the future and has already asked its plan team to begin consideration of limited entry for the West Coast longline fishery. Closures off Washington and Oregon are intended to protect the common thresher shark, sea turtles and marine mammals. This alternative 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 disproportionate financial impacts between small and large vessels under the proposed action.

TOTAL EX-VESSEL REVENUE AND DEPENDENCE ON SWORDFISH FOR THE 64 DRIFT GILLNET VESSELS WITH LANDINGS IN 2001.

Number of Vessels	Dependence on Drift Gillnet Caught Swordfish (category of swordfish revenue/total revenue)	Average Total Ex-vessel Revenue ($/vessel)	Average Percent Drift Gillnet Swordfish (swordfish revenue/total revenue)
9	< percent	$131,171	2.07 percent
3	< 5 - 10 percent	$80,661	6.51 percent
6	> 10 - 15 percent	$204,164	12.48 percent
8	> 15 - 20 percent	$113,173	17.88 percent
8	> 20 - 25 percent	$78,063	22.43 percent
4	> 25 - 30 percent	$58,497	26.78 percent
5	> 30 - 40 percent	$88,168	37.37 percent
4	> 40 - 50 percent	$142,637	43.72 percent
5	> 50 - 60 percent	$85,076	55.02 percent
8	> 60 - 70 percent	$57,054	65.62 percent
4	> 70 percent	$3,834	87.43 percent

Financial or private costs, and measures of fishing performance are those costs and performance measures faced by individual vessel owners. Short-run, financial or private profit realized by vessel owners from participation in the swordfish/shark gillnet fishery was calculated as the difference between the annual private costs incurred during swordfish/shark fishing operations — the annual variable costs associated with swordfish/shark fishing — and the total ex-vessel revenue generated from the vessel's annual landings from swordfish/shark fishing. Only short-run measures of financial and economic performance were calculated because many vessels typically engage in other types of fishing, and there is no reasonable basis for allocating fixed and common costs across types of fishing, i.e. across drift gillnet, surface hook-and-line, or others. These are costs that do not vary with the level of fishing activity and cannot be assigned to a single type of fishing or output. Under these circumstances common or fixed costs are excluded from the short-run net benefit and financial profit calculations for each management alternative. Although drift gillnet vessels harvest a number of species and will use alternative gears, no attempt was made to evaluate potential changes in fishing strategies by these vessels in response to different opportunities to harvest HMS under each of the regulatory alternatives, and what this would mean in terms of operating costs and ex-vessel revenues under alternative fishing strategies.

Financial impacts of each drift gillnet regulatory alternative were evaluated based on incremental changes from the status quo; i.e., the difference between drift gillnet ex-vessel private profits under the proposed action and drift gillnet private profits under the status quo. The following table reports the estimated incremental changes in short-run financial profits for drift gillnet 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. In column two, the present value of the change in average annual short-run financial profit from the status quo (from column three) is calculated for a 25–year time horizon at 7 percent and 4 percent discount rates. Column three reports the difference in estimated average annual short-run financial profit the difference between average annual exvessel revenue and average annual variable costs - under the alternative being considered and the average annual short-run financial profit under the status quo alternative. The discount rate is the rate of interest at which the cash flows associated with the proposed policy are to be discounted. The choice of discount rate reflects social time preference and the opportunity cost of resources that are used under the policy. Social time preference tends to discount the future less heavily than private time preference, while opportunity cost considerations tend to weigh against using lower discount rates for public policies for fear of preempting higher valued private use of the appropriated resources.

The estimated changes in financial profit are based on cost and earnings surveys of industry members. For the drift gillnet fishery, 42 vessel owners (about half the active fleet) responded by providing 2 years of data each. The response rate was sufficient to provide a robust analysis.

The following abbreviations are used in the tables summarizing the analyses:

NQ+ = non-quantifiable positive, NQ- = non-quantifiable negative, NC = no change from status quo, and UN = unknown and NA = not applicable.

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
Drift Gillnet Alternative 1: Continues the swordfish/shark DGN fishery regulations under current state and Federal authorities. (Status quo/No action)	NC	NC
Drift Gillnet Alternative 2: Differs from status quo with the imposition, on all DGN fishers, of a year round Oregon closure inside 1000 fm (or way point equivalent), elimination of the May-August closure inside 75 miles off Oregon, and the closure of U.S. EEZ waters off Washington. (Proposed Action)	NA	-$56,769
7–percent Discount Rate	-$661,557	NA
4–percent Discount Rate	-$886,843	NA
Drift Gillnet Alternative 3: Endorses or adopts only existing Federal (MMPA, ESA) DGN regulations into FMP; defers to state regulations; no difference from status quo.	NA	NC
7–percent Discount Rate	NC	NA
4–percent Discount Rate	NC	NA
Drift Gillnet Alternative 4: Endorses or adopts all Federal conservation and management measures in place under the MMPA and ESA, and adopts state regulations under MSFCMA authority, but also includes and federalizes the states' limited entry programs; differs from status quo by the impact of federalizing states' limited entry programs.	NA	UN
7–percent Discount Rate	UN	NA
4–percent Discount Rate	UN	NA
Drift Gillnet Alternative 5: Adopts turtle time/area closures per Biological Opinion, including larger area closure north of Point Conception; differs from status quo by the impact of enlarging the closed area.	NA	-$247,764
7–percent Discount Rate	-$2,887,333	NA
4–percent Discount Rate	-$9,052,347	NA
Drift Gillnet Alternative 6: Prohibits the use of drift gillnets to take swordfish and sharks in any U.S. EEZ waters less than 1000 fm off Oregon *and* Washington; differs from status quo by the impact of closing this area.[2]	NA	$310
7–percent Discount Rate	$3,617	NA
4–percent Discount Rate	$4,848	NA
Drift Gillnet Alternative 7: Drift gillnets could not be used to take swordfish and sharks in any U.S. EEZ waters north of 45° N latitude year round, including times when the northern turtle closure is not in effect (Nov 16 to Aug 14); differs from status quo by the impact of closing this area.	NA	-$8,612
7–percent Discount Rate	-$100,365	NA
4–percent Discount Rate	-$134,544	NA
Drift Gillnet Alternative 8: Drift gillnetting would be prohibited inside 75 nm off Oregon from May 1 to August 14 and inside the 1,000 fm curve the rest of the year, and U.S. EEZ waters off Washington would be closed year round to all, including Oregon- and California-based DGN fishers; differs from the status quo by the impact of the closures off Oregon and Washington to all fishers.	NA	-$56,769
7–percent Discount Rate	-$661,557	NA
4–percent Discount Rate	-$886,843	NA

The impact on drift gillnet vessels under Alternative 2, the proposed action, primarily stems from rescinding the closure of the U.S. EEZ to fishing by Oregon vessels inside 75 nautical miles off Oregon from May 1 to August 14, closing waters inside the 1,000 fathom curve off Oregon, and the entire U.S. EEZ off Washington to all fishermen year round. These closures alone reduce the discounted value of short-run financial profits available to the fleet formerly fishing in those areas by $661,557 over 25 years at a 7 percent discount rate; or $886,843 over 25 years at a 4 percent discount rate. (The data used for the financial analysis of the Oregon and Washington closures were provided by 2 fishermen out of the 2–3 active fishermen operating in these areas and covered 2 years of fishing for both respondents.)

Although the absolute level of decline in short-run financial profits from this measure is comparatively small in relation to the entire fishery, the entire burden is borne by the 2–3 vessels that currently fish both swordfish and thresher sharks, but especially the latter using drift gillnet gear in these waters. Their lost opportunity represents a decline of 51 percent in their short-run financial profits.

The FMP establishes a prohibition on the use of pelagic longline gear in the U.S. EEZ. The proposed action continues the *de facto* longline prohibition throughout the U.S. EEZ and minimizes potential bycatch of fish and protected species, and reduces fishery competition problems. There are no vessels currently participating in a pelagic longline fishery within the U.S. EEZ off the U.S. West Coast. Although Oregon is the only state that allows pelagic longlining within the U.S. EEZ on a case by case basis, 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 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. 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/i 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/i the U.S. EEZ Alternative 2: Establishes a general prohibition on the use of pelagic longline gear in the U.S. EEZ. (Proposed Action)	NC	NC
Pelagic Longline w/i 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 Pacific Council following completion of a bycatch reduction research program with pre-established strict protocols. Must prove negligible impact on protected and bycatch species. (Ocean Wildlife Campaign Proposal)	NQ+	NQ+
Pelagic Longline w/i 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. (Industry Proposal)	NQ+	NQ+
Pelagic Longline w/i the U.S. EEZ Alternative 5: Prohibits longlining within the West Coast U.S. EEZ with the potential for re-evaluation by the Pacific 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 (a=0.05). (Plan Team Proposal)	NQ+	NQ+

There are not expected to be any financial impacts associated with Alternative 2 because it essentially represents the status quo. It would eliminate the Oregon longline fishery, authorized outside 25 nautical 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 offer potential increases in financial profits if it can be scientifically determined that there would not be an adverse impact on bycatch and protected species interactions.

Beyond the U.S. EEZ, the FMP applies to West Coast-based longline vessels all of the restrictions applied to Hawaii-based longline vessels when fishing west of 150° W. long., but applies selected restrictions to vessels fishing east of 150° W. long., which allows West Coast-based vessels to target swordfish east of 150° W. long. (except for a partial closure in April and May). Restrictions limit sea turtle and seabird interactions and improve monitoring of the fishery. Swordfish targeting would be allowed east of 150° W. long. for most of the year under the FMP, though the ESA section 7 consultations may result in a finding of jeopardy to one or more species listed under the ESA and alternative management measures may be necessary. The objectives of the proposed action provide for a longline fishing opportunity, giving due consideration to traditional participants in the fisheries, while providing adequate protection to sea turtles and seabirds.

A total of 38 vessels participated in the West Coast-based, high seas pelagic longline fishery during 2001 (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.

TOTAL EX-VESSEL REVENUE AND DEPENDENCE ON SWORDFISH FOR THE 38 WEST COAST- VESSELS WITH HIGH SEAS PELAGIC LONGLINE LANDINGS IN 2001.

Number of Vessels	Dependence on High Seas Longline Caught Swordfish (category of swordfish revenue/total revenue)	Average Total Ex-vessel Revenue ($/vessel)	Average Percent Longline Swordfish (swordfish revenue/total revenue)
4	< 50 percent	$228,951	32.57 percent
3	50-70 percent	$170,067	60.99 percent
3	> 70-80 percent	$222,089	76.66 percent
4	> 80-90 percent	$258,335	86.77 percent
13	> 90-95 percent	$182,211	93.26 percent
11	> 95 percent	$219,885	97.57 percent

Financial impacts of each high seas pelagic longline regulatory alternative 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 Alternative 1, the status quo. The following table 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. Owners of 6 vessels provided 2 years of data each; this was about 25 percent of the active fleet in that period.

Under the status quo, the FMP would not impose regulations on 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 is expected to be different from recent conditions. Swordfish is the target species of this fishery, and swordfish sets may 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 assume that 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 would allow 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 from 15° N. lat. to the equator, and from 145° W. long. to 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 2 was chosen because the Pacific Council concluded that it could not propose elimination of such a valuable fishery without clear indication that the takes of sea turtles would be excessive.

Alternative 3 would prohibit swordfish targeting with implementation of the FMP. Under Alternative 3 the assumption is that the fishery would disappear 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)	NA	$6,712,558
7–percent Discount Rate	$78,225,581	NA
4–percent Discount Rate	$105,645,527	NA
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.	NC	NC
7–percent Discount Rate	NC	NC
4–percent Discount Rate	NC	NC

Alternative 2 would maintain the fishery, but impose some slight additional costs on West Coast-based longliners targeting swordfish on the high seas. Fishermen would have to incur 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 be a slight reduction in annual short-run, financial profits from those reported above. There may also be reductions in swordfish catch rates due to the alternative of turtle and seabird mitigation measures. This could further reduce short-run, financial profits. If subsequent analyses prove that swordfish longlining on the fishing grounds of the West Coast-based, high seas pelagic longline fleet results in less impact on turtles and other protected species (or that these interactions can be avoided), its further development could lead to increased short run financial profits. If on the other hand, subsequent analyses prove that swordfish longlining in the fishing grounds in the eastern north Pacific action area has potential for the same or greater impact on protected species, the fishery may not be able to continue operating unless ways to prevent jeopardy to protected species can be developed. In the latter case there are likely to be additional harvesting costs

involved to perform the prevention measures which in the absence of any improvements in harvest rates, or other efficiency gains, would reduce short-run financial profits.

The fishery will probably be subject to regulations promulgated under other authorities, which are expected to result in its 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 may persist under existing state regulations, in which case short-run financial profits are 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.

The FMP opens the entire U.S. EEZ to purse seine fishing, although there has been little interest in such fishing for highly migratory species off Oregon and Washington. The objectives of the proposed action are to provide for additional purse seine fishing opportunities. There were 27 vessels on average participating in the West Coast-based, coastal purse seine fishery during the 1995–99 period. 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 purse seine regulatory alternative were evaluated based on incremental changes from the status quo; i.e., the difference between expected purse seine ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for pelagic longline vessels for each regulatory alternative relative to the status quo. There are no cost and earnings data available for purse seine fishing for highly migratory species off Oregon and Washington.

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
Purse Seine Alternative 1: State area closures would remain in effect under states' authorities. (Status Quo/No Action)	NC	NC
Purse Seine Alternative 2: Opens the entire U.S. EEZ to purse seine fishing. (Proposed Action)	NQ+	NQ+
Purse Seine Alternative 3: Closes the area within the U.S. EEZ north of 45° N latitude to purse seine fishing to address bycatch and protected species concerns, and possible adverse impacts on other fisheries.	NQ+	NQ+
Purse Seine Alternative 4: Closes the U.S. EEZ off Washington to purse seine fishing, but allows it off Oregon and California.	NQ+	NQ+

The proposed action will have little impact on private profits because there has been virtually no purse seine fishing for highly migratory species in the waters proposed to be closed.

Northern bluefin tuna do not generally occur in significant numbers in the Pacific Northwest except during periods of elevated water temperature. Thus, there would likely only be an increase in purse seine fishing activity for northern bluefin tuna during El Nino-like conditions. These conditions, by providing an additional fishing opportunity, would likely increase short-run financial profits for purse seiners that currently participate in the Oregon-Washington sardine fishery. Under exceptionally good bluefin fishing in Oregon-Washington waters, this opportunity might extend to California-based purse seiners.

Alternatives 3 and 4 would preclude existing fishing opportunities above 45° N. lat. for California and Oregon vessels. This could reduce their potential financial profits in years of exceptionally good bluefin fishing in these waters.

It is noted that only 2 purse seine vessels were recorded as landing HMS into a West Coast port in 2002. NMFS does not expect the development of a significant HMS purse seine fishery on the West Coast, due to lack of processing capability and markets, and the unlikelihood of new investment in new processing capability under the current price structure.

The FMP would prohibit the sale of striped marlin by all vessels. The objectives are to provide for continued recreational fishing opportunities. Prohibiting sale removes the incentive for commercial fishermen to take striped marlin.

Financial impacts of each regulatory alternative pertaining to the sale of striped marlin were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to 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
Marlin Sales Alternative 1: The sale of striped marlin would not be prohibited by Federal regulation in this FMP, but would continue to be prohibited by the State of California. (Status Quo/No Action)	NC	NC
Marlin Sales Alternative 2: Prohibits the sale of striped marlin by vessels under PFMC jurisdiction. (Proposed Action)	NC	NC

The proposed action will have little impact on private profits because there is virtually no change from the status quo. Striped marlin cannot now be sold, so no revenue impacts to the fishermen will ensue.

The FMP would require a Federal permit with a specific endorsement for each gear type (harpoon, drift gillnet, surface hook and line, purse seine, and pelagic longline). The permits and endorsements are subject to sanctions, including revocation, as provided by Section 308 (g) of the Magnuson-Stevens Act. Permits are a standard tool used to support management by facilitating collection of biological, economic or social data, facilitating enforcement of laws and regulations, identifying those who would be affected by actions to prevent or reduce excess capacity in the fishery, and providing information to meet international obligations.

A review of NMFS data bases indicates that there are an estimated 1,337 vessels likely to harvest highly migratory species. All vessels would be considered small businesses under the SBA standards. Therefore, there would be no disproportionate financial impacts between small and large vessels under the proposed action. The proposed action is duplicative in the sense that permit requirements implemented for other purposes (e.g., HSFCA) may require a vessel to have more than one permit to fish highly migratory species.

Financial impacts of each regulatory alternative pertaining to commercial fishing permits were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo. 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
Commercial Permit Alternative 1: Require no new Federal permits. Federal permits under other laws would remain in place, as would state permit requirements. (Status Quo/No Action)	NC	NC
Commercial Permit Alternative 2: Requires a Federal permit for HMS vessels with a specific endorsement for each gear type (harpoon, DGN, surface hook and line, purse seine, and pelagic longline). The permit is to be issued to a vessel owner for each specific fishing vessel used in commercial HMS fishing. (Proposed Action)	NQ-	NQ-
Commercial Permit Alternative 3: Requires a Federal permit for all vessels engaged in commercial HMS fisheries within and outside the U.S. EEZ. One permit would cover all HMS fisheries for a given vessel.	NQ-	NQ-
Commercial Permit Alternative 4: Requires a Federal permit for all vessels engaged in selected commercial fisheries. Initial candidates for permits would be vessels engaged in DGN and longline fisheries.	NQ-	NQ-

Under Alternative 2 there would be a slight reduction in financial profits due to the cost of acquiring a commercial permit. Estimates of permit costs for commercial vessels are about $60.00 per vessel; a $40 permit fee and $20 for the time involved in filling out or confirming information on the permit registration form. The same costs would be entailed under Alternatives 3 and 4, no matter what the scope of the permit. This is an additional fixed cost, and although minor, may be disproportionate across smaller vessels engaged in HMS fisheries.

The FMP requires a Federal permit for all charter or commercial passenger carrying fishing vessels (CPFV) from which recreational fishers pursue highly migratory species, but an existing state permit or license for recreational vessels could meet this requirement. As with commercial fishing permits, this measure would provide a mechanism for identifying the scope of the recreational fishery and the participants so that data collection and research could be more focused and effective. There are approximately 300 charter and CPFV vessels on the West Coast. All 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. The proposed action would not require new reporting, record-keeping, or other compliance requirements. However, permit processing and periodic permit renewal would be necessary under state laws and regulations.

Financial impacts of each regulatory alternative pertaining to recreational fishing permits were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo. 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
Recreational Permit Alternative 1 Requires no new Federal permits for recreational vessels, private or party/charter. (Status Quo/No Action)	NC	NC
Recreational Permit Alternative 2: Requires a Federal permit for all CPFVs that fish for HMS, but an existing state permit or license for recreational vessels could meet this requirement. The Pacific Council would, however, request states to incorporate in their existing CPFV permit systems an allowance for an HMS species endorsement on permits, so that statistics could be gathered on that segment of the HMS fishery. (Proposed Action)	NQ-	NQ-
Recreational Permit Alternative 3: Requires a separate Federal permit for all CPFVs that fish for HMS; a state permit could not be used to fill this requirement, as in Alternative 2.	NQ-	NQ-
Recreational Permit Alternative 4: Requires a Federal permit for all recreational fishing vessels (private, party and charter/CPFV) that fish for HMS within and outside the U.S. EEZ.	NQ-	NQ-

Under Alternative 2, recreational vessels without a state permit would experience a slight reduction in financial profits due to the cost of acquiring a Federal recreational permit, which is estimated to be about $50.00 per vessel. This is an additional fixed cost, and even though minor, may be disproportionate across smaller vessels engaged in commercial passenger recreational fishing for highly migratory species. The same costs would be entailed under Alternatives 3 and 4, no matter what the scope of the permit. Alternative 3 could be somewhat duplicative if it were to overlap state requirements. If a vessel has a choice between a state and a federally issued permit to meet this requirement, there could be some cost savings, improved financial profits, if there is a difference in costs between state and Federal permits.

The FMP would require all commercial and recreational party or charter fishing vessels to maintain and submit logbooks to NMFS. State or existing Federal logbooks could meet this requirement as long as essential data elements are present and data are available to NMFS subject to a data exchange agreement. This measure would facilitate the monitoring of commercial and recreational vessel activities and enhance data collection. This measure would effect about 1,354 commercial and recreational vessels. The number of vessels for which this requirement poses an increased record keeping burden is unknown, but many vessels already are required to maintain state or existing Federal logbooks that would satisfy this requirement. The proposed action would impose new reporting and record-keeping requirements for some vessels. The proposed action is designed to avoid duplication of existing Federal reporting requirements.

Financial impacts of each regulatory alternative pertaining to fishing vessel reporting requirements were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo. 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
Reporting Requirements Alternative 1: There would be no new Federal requirements for reporting, including Federal provisions for filling out Far Offshore Fishing Declarations. Existing Federal reporting requirements (e.g., HSFCA reports for fishing on the high seas) and state reporting requirements would apply. (Status Quo/No Action)	NC	NC
Reporting Requirements Alternative 2: Requires all commercial and recreational party or charter/CPFV fishing vessels to maintain and submit logbooks to NMFS. State or existing Federal logbooks could meet this requirement as long as essential data elements are present, and data are available to NMFS subject to a data exchange agreement. (Proposed Action)	NQ-	NQ-
Reporting Requirements Alternative 3 Limits new Federal reporting requirements to those commercial vessels that are not already required to report under existing Federal laws.	NQ-	NQ-

Under Alternative 2 there would be a slight reduction in financial profits due to the cost of satisfying the proposed reporting requirements for logbooks for those vessels that do not already meet these requirements. There are also additional reporting requirements associated with the use of vessel monitoring systems and vessel markings. Vessel monitoring systems would be required of longline vessels, but there are not expected to be any costs to vessels under this requirement. All vessels would be required to have identifying numbers, which would impose some additional fixed costs, and although minor, may be disproportionate across smaller vessels engaged in fisheries for highly migratory species. Under Alternative 3, financial impacts would be less because many vessels already maintain logbooks under existing Federal laws.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements will be submitted to OMB for approval. The public reporting burden for these requirements is estimated to be 5 minutes for a confirmation of records for a permit application, 10 minutes to correct a record for a permit application, 30 minutes for a new permit application, 5 minutes for filling out a log each day, and 45 minutes to affix the official number of a vessel to its bow and weather deck. In addition, for longline vessels, the reporting burden includes 4 hours for installation of a vessel monitoring system, 2 hours for maintenance of the system, and 24 seconds for electronic reporting via the satellite based vessel monitoring system. 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.

A formal consultation under the ESA was initiated on September 24, 2003. Based on the conclusions of the consultation, the Regional Administrator will determine if fishing activities under this proposed rule are likely to affect adversely endangered or threatened species or their critical habitat under NMFS jurisdiction.

A formal consultation with the Fish and Wildlife Service (FWS) under the ESA was initiated by NMFS on September 22, 2003. Based on the consultation, the FWS will determine if fishing activities under this proposed rule are likely to affect adversely endangered or threatened species or their critical habitat under its jurisdiction.

The Regional Administrator has determined that, based on the information and analyses in the FMP, fishing activities conducted under this proposed rule would have no adverse impacts on marine mammals. Regulations promulgated under MMPA authority to implement a Pacific Offshore Cetacean Take Reduction Plan would remain in effect.

List of Subjects

50 CFR Part 223

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

50 CFR Part 224

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

50 CFR Part 660

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

Dated: December 3, 2003.

William T. Hogarth,

Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223, 50 CFR part 224, and 50 CFR part 660 are proposed to be 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.*

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 leatherback sea turtles are provided at § 223.206(d)(2)(iv) and § 660.713.

PART 660—FISHERIES OFF THE WEST COAST 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 Treaty Indian rights.
660.707 Permits.
660.708 Reporting.
660.709 Annual specifications.
660.710 Closure of directed fishery.
660.711 General catch restrictions.
660.712 Longline.
660.713 Drift net.
660.714 Purse seine.
660.715 Harpoon.
660.716 Surface hook-and-line.
660.717 Framework for revising regulations.
660.718 Exempted fishing.
660.719 Scientific observers.

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 vessels based on the West Coast and fishing for HMS seaward of the coasts of Washington, Oregon, and California.

§ 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, landing and/or sale; 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 means 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 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 on September 30) of the following year.

Fishery management area means the U.S. EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico.

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 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 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 fishing means fishing with authorized recreational fishing gear for personal use only and not for sale, barter or trade of all or any part of the catch.

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

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 a designee.

Transship 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 §660.712(d) to track and transmit the positions of fishing vessels.

§ 660.703 Management area.

The fishery management area for the regulation of fishing for HMS comprises the waters of the U.S. EEZ as defined in §660.402 and the high seas seaward of the U.S. EEZ to the extent persons fishing with permits issued under this subpart are active in those areas.

§ 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 14 inches (35.56 cm) in height. 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 commercial fishing gear.

(b) Fish with gear in any closed area in which the use of such gear is prohibited under this subpart.

(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 or by § 660.718.

(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.

(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 HMS harvested with longline gear on board a vessel without a VMS unit after NMFS has installed the VMS unit on that 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)(2).

(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)(7)

(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)(10).

(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 (including transshipping HMS) with a vessel registered for use with longline gear within closed areas or by use of unapproved gear configurations in violation of § 660.712(a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (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)(9).

(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).

§ 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) The NMFS recognizes the areas set forth below 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 recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary 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 usual and accustomed 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) above.

(h) Fishing by a member of a Pacific Coast treaty Indian tribe outside that tribe's usual and accustomed 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 fishing for HMS off, or landing HMS in, the States of California, Oregon, and Washington.

(1) By January 1, 2005, a commercial fishing vessel or a recreational charter vessel of the United States must be registered for use under a HMS permit if that vessel is used:

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

(ii) To carry passengers for hire on a trip to engage in recreational fishing; or

(iii) 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) A permit is valid only for the gear type for which an endorsement has been issued for that permit.

(5) 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 with an endorsement for use of gear for commercial fishing.

(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 (HSFCA), the Tuna Conventions Act of 1950, and § 660.21(a) of this part.

(2) All permits issued by NMFS in accordance with paragraph (b)(1) of this section will be issued by [date 60 days following effective date of final rule] and for commercial fishing vessels will authorize the use of specific fishing gear.

(3) Beginning on [date 60 days following effective date of final rule], any vessel owner who has not received an HMS permit but who wishes to have such a permit may apply to the SFD for a permit to fish for HMS off the coasts of California, Oregon, and Washington by obtaining a Southwest Region Federal Fisheries application form from the SFD and submitting a completed application. A completed application is one that contains all the necessary information and signatures required. A copy of the application may be obtained at *http://swr.nmfs.noaa.gov/permits.htm*.

(4) A minimum of 15 business days should be allowed for SFD to process 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.

(5) Permits issued under this subpart will remain valid for 5 years unless revoked or suspended.

(6) SFD will issue replacement permits without charge to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

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

(c) *Display.* A permit issued under this subpart is required to land HMS in any port of California, Oregon and Washington. 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 taken when fishing under the permit. 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 logbook report forms provided by the Regional Administrator, or by a state agency that has entered into an agreement with the Regional Administrator. All information specified on the form(s) 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 transhipment of HMS. Each form must be signed and dated by the fishing vessel operator.

(1) Logbooks acceptable to meeting the reporting requirements of this section may be found at *http://swr.nmfs.noaa.gov/logbooks.htm*, and may include:

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

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

(iii) The logbook required by § 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 maintain and submit a logbook for a fishing trip under any of the above authorities must obtain a copy of the appropriate logbook from the SFD and maintain and submit the form provided by SFD.

(3) The Regional Administrator may, after consultation with the Council, initiate rulemaking to modify the information to be provided on the fishing logbook 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 to propose any necessary harvest guidelines, quotas, or other management measures and make its recommendations to NMFS. The proposal shall include description of the purpose of the specifications and analyze the impacts of implementing such specifications.

(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 at 2400 hours local time on March 31 of each subsequent year.

(c) Harvest guidelines, quotas, and other management measures announced for a particular year will remain 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 recommend management action to conserve and manage the fisheries 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. To the extent such recommendations are found necessary and reasonable, NMFS will implement them 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 management unit sharks, whichever is greater.

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

(c) *Marlin prohibition.* The sale of striped marlin is prohibited.

(d) *Sea turtle handling and resuscitation.* All sea turtles taken incidentally in fishing operations by any HMS vessel must be handled in accordance with 50 CFR part 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 use 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 flourescent 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 posses 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.).

(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 (b)(2) of this section, dip nets meeting minimum standards specified in (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 (b)(4) through (b)(6) 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 of this subpart). 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 § 223.206(d)(1) of this title, 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)(8)(iv)(C) through (J) of this section.

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

(D) 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;

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

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

(G) 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:

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

(*2*) Able to breathe without noise;

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

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

(*5*) Feathers are dry.

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

(I) 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.

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

(9) 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) During the experimental VMS program, a longline permit holder shall 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.

§ 660.713 Drift gillnet fishery.

(a) *Take reduction plan gear restrictions.* Gear restrictions implementing the Pacific Offshore Cetacean Take Reduction Plan under the authority of the Marine Mammal Protection Act of 1972 remain in effect and 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 (1,828.8 m).

(2) Up to 1,500 ft (457.2 m) of drift gillnet in separate panels of 600 ft (182.9 m) may be on board the vessel in a storage area.

(c) *Protected Resource Area Closures.* (1) 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 (see figure 3 of this section):

(i) Pt. Sur at 36° 18.5′ N. lat.;

(ii) 34° 27′ N. lat. 123° 35′ W. long.;

(iii) 34° 27′ N. lat. 129° W. long.;

(iv) 45° N. lat. 129° W. long.; and

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

(2) No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean south of 34o 27' N. lat. (Pt. Conception) and east of 120° W. long. from January 1 through January 31 and from August 15 through August 31 during a forecasted or occurring El Nino event.

(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 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.

(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 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, California to Noonday Rock, to Southeast Farallon Island to Pillar Point.

(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 and a line extending 6 nautical miles east of Cardwell Point.

(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 and a line extending 10 nautical miles east of Cardwell Point.

(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 and a line extending 6 nautical miles east of Skunk Point 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.

§ 660.714 Purse seine. [Reserved]

§ 660.715 Harpoon. [Reserved]

§ 660.716 Surface hook-and-line. [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 for the harvest of HMS in a manner or at times or places 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 § 600.745 of this chapter.

§ 660.719 Scientific observers.

(a) All fishing vessels operating in HMS fisheries, including catcher/processors, at-sea processors, and vessels that harvest in Washington, Oregon, or California and land catch in another area, may be required to accommodate NMFS certified observers on board to collect scientific data. Any observer program will be implemented in accordance with the procedures at § 660.717.

(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 at least 24 hours (not including weekends and Federal holidays) before any trip.

(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 these regulations. 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.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 112103E]

RIN 0648–AR66

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Continuation of the Madison/Swanson and Steamboat Lumps Marine Reserves

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

ACTION: Notice of availability of Amendment 21 to the reef fish resources of the Gulf of Mexico; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 21 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico for review, approval, and implementation by NMFS. Amendment 21 would continue the marine reserves at Madison-Swanson and Steamboat Lumps for an additional 6 years and revise the fishing restrictions that apply within the reserves. The intended effects of Amendment 21 are to provide protection for spawning aggregations of gag grouper in order to prevent overfishing, continue protection of a portion of the offshore population of male gag grouper, and evaluate the effect and usefulness of marine reserves as a management tool.

DATES: Written comments must be received on or before February 9, 2004.

ADDRESSES: Written comments must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–522–5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of Amendment 21, which includes an environmental assessment (EA), a supplemental regulatory impact review (RIR) and initial regulatory flexibility analysis (IRFA), and a copy of a minority report filed by three Council members opposing provisions in the amendment that allow seasonal surface trolling within the reserves, may be obtained from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; phone: 813–228–2815; fax: 813–833–1844; e-mail: *gulf.council@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305; fax: 727–570–5583; e-mail: *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, immediately publish a document in the **Federal Register** stating that the plan or amendment is available for public review and comment.

The Council has submitted Amendment 21 to the subject FMP to NMFS, for Secretarial review. The amendment proposes to: (1) extend the marine reserves at Madison-Swanson and Steamboat Lumps for an additional 6 years; (2) allow surface trolling in the marine reserves during May through October; (3) prohibit all fishing and possession of all fish species in the marine reserves during November through April except for vessels transiting the marine reserves in accordance with the same requirements as those proposed for the Tortugas South and North closed fishing areas (Reef Fish Amendment 19); and (4) prohibit the possession of reef fish within the reserves except for vessels transiting the reserves in accordance with the same requirements as proposed for the Tortugas South and North closed fishing areas (Reef Fish Amendment 19). Additionally, the Council will send a letter to the Highly Migratory Species Division of NMFS requesting that they implement regulations compatible with the proposals in this amendment for species under their jurisdiction.

A proposed rule that would implement measures outlined in the amendment has been prepared. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with Amendment 21, the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.