

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 04/20/2007

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Barry West
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 02/06/2007

ACTION REQUESTED: Revision of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200702-0648-003
TITLE: Southwest Region Permit Family of Forms
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0204

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 04/30/2010

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	1,309	530	1,000
New	710	143	533
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	-599	-387	-467
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official:

John F. Morrall III
Acting Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Southwest Region Permit Family of Forms	NA, NA	Coastal Pelagic Species permit application, Highly Migratory Species permit application	

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
SOUTHWEST REGION PERMIT FAMILY OF FORMS
OMB CONTROL NO.: 0648-0204**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) established regional fishery management councils, including the Pacific Fishery Management Council (Pacific Council), to develop fishery management plans (FMPs) for fisheries in the U.S. exclusive economic zone (EEZ). These plans, if approved by the Secretary of Commerce, are implemented by Federal regulations, which are enforced by the National Marine Fisheries Service (NMFS) and the U.S. Coast Guard (USCG), in cooperation with State agencies to the extent possible. FMPs are intended to regulate fishing for stocks to prevent overfishing and achieve the optimum yield from the fisheries for the benefit of the U.S.

The Pacific Council has prepared a FMP for the coastal pelagic species fishery off the U.S. West Coast and for U.S. West Coast Fisheries for Highly Migratory Species. Each of these FMPs contains a requirement that commercial fishery participants obtain permits for the fishery. This request deals with the information collection requirements for permits. The Southwest Region, NMFS, administers the permit program. Both permits are valid for a two-year term.

There are three types of permits: basic fishery permits highly migratory species (HMS), limited entry permits for selected fisheries (e.g, West Coast coastal pelagic fishery), and experimental fishing permits (EFPs). Basic permits are used in all fisheries where there are no specific limitations or eligibility criteria for entry to the fishery. Limited access/entry permits are used to prevent overcapitalization or address other problems in the fishery. EFPs are used to allow controlled and observed fishing with gear or techniques or within closed areas, which would otherwise be prohibited. Such fishing may demonstrate new ways to fish economically without adverse biological problems or with less take of protected resources such as sea turtles. In addition, there are provisions for transfers among owners of certain limited entry permits such as the coastal pelagic species limited entry permits and for appeals of actions on coastal pelagic species limited entry permits.

General permit requirements are found in 50 CFR 660.13 (Subpart B) with the specific requirements contained in relevant sections of 50 CFR 660 (Subparts C - F, and Subpart I) (see attached associated regulations).

There are typically provisions in the permit process for appeals of permit denials. Appellants may use whatever form they believe is appropriate in requesting NMFS to review their case.

Permits and the information obtained through permit applications are essential ingredients in the management of these fisheries. They serve to identify actual or potential participants in the various fisheries. These data are needed to help measure the impacts of management controls on the participants in the fisheries. Permits are also effective tools in the enforcement of other fishery regulations. The threat of permit sanctions that would exclude a vessel from the fishery

may be more effective than fines for violations of specific fishery regulations. Further, transferable limited access/entry permits may have a resale value and may be an asset that the government can seize in settlement of penalties for fishery violations.

Permits also provide an important link between the NMFS and fishermen via the permit application process. They make it easier for NMFS staff to contact fishermen and advise them of changes in the regulations or fishery conditions and give fishermen a direct point of contact in case they have questions or problems they want to bring to the attention of NMFS or a fishery management council.

Section 303 (b) (1) of the Magnuson-Stevens Act specifically authorizes the establishment of permit requirements. Almost all international, federal, state, and local fishery management authority uses permits as part of their management systems.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The information requested on the NMFS Southwest Region federal fisheries permit application forms by the Southwest Region to determine whether the applicant meets the eligibility criteria for a permit for the fishery the person wants to enter. The data may also be used by several offices of NMFS, USCG, and state and territorial fishery-management, research, and enforcement agencies. As requested, summaries of permit application information are provided to the Western Pacific and Pacific Councils, member states, and interested parties to describe the characteristics of the fishery and estimate the nature and magnitude of the impacts of fishery regulations on different permit holders. Information on the vessel (as provided in documentation or registration certificates) is used to ascertain actual or potential participants in different sectors of each fishery and the amount of harvesting pressure they might exert on the fishery. This is important in determining the potential effectiveness and impacts of different management approaches and in assessing the capacity of the fleets in the fisheries.

The information collected is basic data on applicants, such as name of owner and vessel operator, name of vessel and its official number, address, telephone number, and radio call sign. Required copies of the vessel's USCG documentation or state/territory registration certificates identify the legal ownership of the vessel being permitted. This latter requirement is essential for imposing permit sanctions, which are an effective fisheries enforcement tool. Since many vessels may be owned by partnerships or corporations, identification of ownership on the application form allows NMFS to sanction the company as well as the individual vessel operator for repeated violations of federal regulations. By having addresses, the NMFS can mail fishery information to vessel owners and operators; also permit renewal forms are sent to permit holders quickly and easily. Telephone numbers (business, home, facsimile) are used to assist NMFS in processing the application by allowing questions to be resolved more quickly than by correspondence.

Disclosure of the social security number of the applicant and vessel operator is mandatory in accordance with the Debt Collection Act (31 U.S.C. 7701), which requires that agencies obtain taxpayer identification numbers from person applying for Federal permits.

Vessel owner or his or her agent's signature is required as legally binding actions, which ensure eligibility to receive or transfer a permit under specific FMP regulations. False statements without the signature of the applicant would be much harder to prosecute.

Appeals of permit denials must be accompanied by documentation from the appellant to try to show why the permit should have been granted. This could include fishing logs, invoices from fish sales, State landings records, auction house receipts, financial transaction records relative to vessel ownership, or other records to demonstrate that the appellant had met the eligibility criteria for the particular fishery.

EFPs are issued to applicants for fishing activities that would otherwise be prohibited under a FMP. A specific form for an EFP application is not required; however, an application for an EFP must provide a narrative description of the proposed activity to fully document the intended operations. This documentation allows NMFS, the Pacific Council and affected state/territorial fishery agency to evaluate the consequences of the experimental fishing activity and weigh the benefits and costs. EFPs allow innovation that may relieve excessive fishing effort or discover new methods that may resolve existing technological barriers to better management of the fishery and resource.

Implementing regulations of Amendment 8 to the Fishery Management Plan for the Northern Anchovy Fishery, renamed the Coastal Pelagic Species Fishery Management Plan, require limited entry permits be issued to all vessels fishing for coastal pelagic species, such as Pacific mackerel, jack mackerel, Pacific sardine, etc., south of 39 degrees N. latitude. Permits are obtained by filling out an application with information that allows NMFS to determine eligibility and status of each vessel. These permits are transferable for one year following implementation of the amendment. After one year, permits may be transferable to another vessel only if the permitted vessel is lost, stolen, or no longer able to participate in a federally managed commercial fishery. An application for transferability can only originate from the vessel owner. The coastal pelagic species permit collection is necessary for NMFS to administer the limited entry program for the fishery. Vessels authorized to fish in a restricted U.S. West Coast fishery need to be distinguished from unauthorized vessels with regard to assessing economic impacts and enforcement at sea.

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The Southwest Region's Web site at <http://swr.ucsd.edu> is used to inform the public about the coastal pelagic species permit program and provides a means by which the application form for the coastal pelagic species limited entry permits may be obtained. EFP applications are relatively rare events and cannot be predicted in advance. There is no improved information technology that would simplify the application process.

4. Describe efforts to identify duplication.

One Federal program that provides some similar information is the vessel documentation program of the U.S. Coast Guard. The permit process calls for submission of a copy of the current certificate of Documentation for vessels to provide information about the vessels and their ownership. The permit application form no longer contains a requirement to provide duplicate information.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

All of the vessels in the Pacific coastal pelagic fishery are small business entities of similar size and are affected comparably. All fishing operations involving vessels in the highly migratory fisheries, except the large scale tuna purse seine vessels, can be categorized as small businesses. However, the reporting burden of applying for a permit is minor, relative to the overall cost of fishing. No special measures are needed to accommodate different sized businesses. Only the minimum data to meet the permit objectives are requested from the permit applications.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If permit data are not available or are collected less frequently, NMFS will have difficulty monitoring the fishery, determining entry and exit patterns, and providing information needed to ensure full impact analysis from the regulatory programs. NMFS Enforcement will not be assured of being able to identify current permit holders for purposes of compliance monitoring and enforcement of the regulations. There will be less frequent contact with fishermen and our ability to contact permit holders to consult them prior to adopting new regulations and to advise them of regulatory changes will diminish. Our ability to document transfers of marketable permits under the current western Pacific limited access permit programs for pelagic longline and crustacean fisheries will be compromised.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The collection is consistent with the OMB Guidelines.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice (copy attached) solicited public comment on this collection. None was received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payments or gifts are involved in this program.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Under the Magnuson-Stevens Act and NOAA Administrative Order 216-100, information submitted in accordance with regulatory requirements under the Act is confidential. This includes confidential information submitted with a permit application. Personal and proprietary information is not released to the public.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No questions of a sensitive nature are asked.

12. Provide an estimate in hours of the burden of the collection of information.

For the west coast HMS fishery permits, it was estimated that after the initial first 2-year cycle has been completed, 90 percent of all permit holders (1,204 of 1,337 vessels on initial collection) will renew permits every 2 years with minimal changes in information, taking 6 minutes (0.1 hours) per year. Thus, 1,204 vessels would renew with a burden of 120.4 hours, or an annualized burden of 60.2 hours (602 responses). In addition, there will be substitution vessels for the 10 percent (133 vessels) which depart the fishery, at a burden of 60 minutes for a new permit, with a total burden estimated at 133 hours. The annualized burden for this sector is 66.5 hours per year (67 responses). Thus, the total annualized burden is 127 hours (60.2 + 66.5). Total annualized responses are 669.

For the west coast coastal pelagic fishery permits, there will be no new permits issued, only renewals. It is estimated that there will be 65 respondents x 0.25 per hour equaling 16.25 hours. The annualized burden for this sector would be 8.1 hours (33 responses). Transfers are estimated at 7 respondents x 0.50 hr/response = 3.50 hours (annualized to 1.75 hours (4 responses). Appeals are estimated at 5 respondents x 2 hours/response = 10 hours (annualized to

5 hours; 3 responses). Thus, the total annualized burden is 15 (8.1 + 1.75 + 5). Total annualized responses are 40.

For EFPs, it is estimated that there will be one new permit issued each year x 60 minutes to complete. Thus, the total annualized burden hours would be 1 hour and 1 response per year.

Total respondents will be 1,270. Total annualized hours will be 143. Total annualized responses will be 710.

The estimated total annual cost to respondents is estimated at \$2,850 per year. This was derived by multiplying the number of hours of burden each year times an hourly cost rate of \$20, the estimated total cost for administrative staff support in an office setting.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

There is no "start-up" capital cost for complying with these requirements. The annual cost to the respondents for postage, faxes, copies, etc. related to this collection is estimated at \$533.00.

14. Provide estimates of annualized cost to the Federal government.

The estimated annualized cost to the government is estimated at \$6,710. This is based on the approximate cost of a GS-7/8 Permits Technician in the Los Angeles Area for sending out permit renewal notices, reviewing application, responding to inquiries, awarding the permit and processing the data. The breakdown is as follows:

1.10 hrs x \$19.23 x 1,270 respondents = \$26,843
Total annualized burden = \$6,710

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

There is an overall decrease in burden hours due to adjustments in the number of respondents, based on estimations after the initial two year period of a new collection, and to the transfer of all western Pacific fishery permits to the Pacific Islands Regional Office to be covered under PRA collection 0648-0490, Pacific Islands Permit Family of Forms. The estimated number of appeals for the coastal pelagic fishery permit also declined as a new estimate was calculated based on the average number of appeals files during the last three years.

The total cost burden for recordkeeping also declined due to fewer respondents.

16. For collections whose results will be published, outline the plans for tabulation and publication.

No publications based solely on permit data are planned at this time.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

The expiration dates will be shown on the application forms.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.



U.S. DEPARTMENT OF COMMERCE
 NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
 NATIONAL MARINE FISHERIES SERVICE
 501 WEST OCEAN BLVD
 SUITE 4200
 LONG BEACH, CA 90802

OMB#: 0648-0204
 APPROVAL EXPIRES: 12/31/2006

Pacific Highly Migratory Species Vessel Permit Application

SECTION 1 VESSEL INFORMATION (please print legibly or type)

USCG DOC. OR STATE REG. NO. VESSEL		VESSEL NAME		HULL IDENTIFICATION NUMBER	
HOME PORT AND STATE			USCG DOCUMENTED HAIL PORT AND STATE		
RADIO CALL SIGN			DOES THIS VESSEL HAVE AN OPERATIONAL VMS? YES _____ NO _____		
REGISTERED LENGTH (FT.)	REGISTERED BREADTH (FT.)	REGISTERED DEPTH (FT.)	GROSS TONS	NET TONS	
HOLD CAPACITY (SHORT TONS)		HOLD CAPACITY (METRIC TONS)		HOLD CAPACITY (CUBIC METERS)	
PROPULSION TYPE	REFRIGERATION TYPE	HORSEPOWER		HULL MATERIAL	
YEAR BUILT	LOCATION BUILT	CREW SIZE (INCLUDING OFFICERS)	PASSENGER CAPACITY		
PREVIOUS VESSEL NAMES		VESSEL FLAG	EFFECTIVE DATES		

SECTION 2 SELECT THE TYPE OF GEAR TO BE AUTHORIZED BY THE HMS PERMIT

COMMERCIAL:			RECREATIONAL:		
<input type="checkbox"/> HARPOON	<input type="checkbox"/> PURSE SEINE	<input type="checkbox"/> CHARTER VESSEL			
<input type="checkbox"/> TROLL/JIG	<input type="checkbox"/> LONGLINE				
<input type="checkbox"/> DRIFT GILLNET	<input type="checkbox"/> BAITBOAT				

SECTION 3 VESSEL OWNERSHIP INFORMATION

COMPANY NAME		DATE CORPORATION FILED	EIN/SSN	DUNNS NO.
BUSINESS ADDRESS		CITY	STATE	ZIP
BUSINESS TELEPHONE	BUSINESS FAX	BUSINESS CELL PHONE	BUSINESS E-MAIL	
MANAGING OWNER NAME LAST	FIRST	MIDDLE	SUFFIX	DATE OF BIRTH (MONTH/DAY/YEAR)
SECOND OWNER NAME LAST	FIRST	MIDDLE	SUFFIX	DATE OF BIRTH (MONTH/DAY/YEAR)
THIRD OWNER NAME LAST	FIRST	MIDDLE	SUFFIX	DATE OF BIRTH (MONTH/DAY/YEAR)

SECTION 4 SIGNATURE (All applications must be signed and dated)

I certify that the above information is complete, true, and correct to the best of my knowledge and belief.

OWNER'S SIGNATURE:	NAME: (Print legibly or type)	DATE:
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General - This information is being collected by the National Marine Fisheries Service to ensure that timely and accurate records are available concerning the fishing vessels of the U.S. that participate in Pacific Ocean fisheries for highly migratory species, consistent with the requirements of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species. The collection of information concerning U.S. fishing vessels harvesting tuna in the eastern Pacific Ocean is also necessary for the U.S. to comply with its obligations as a member of the Inter-American Tropical Tuna Commission.

This permit is required for commercial fishing vessels and recreational charter vessels that harvest any of the species that are included in the FMP. They are: **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](#))

Instructions -

Section 1 - Enter vessel information as it appears on the Coast Guard documentation or, if the vessel is not Coast Guard documented, as it appears on the state registration certificate.

Hull Identification Number - If your vessel does not have a hull identification number leave the box blank.

Home Port - enter the city and state where the vessel is customarily kept, not necessarily the home port listed on the certificate of documentation.

Hail Port - enter the city and state listed on the certificate of documentation

Radio Call Sign – If your vessel has no radio, leave blank

Operational VMS – Global positioning system using satellites to track vessel movements

Hold Capacity - Cubic Meters is preferred; however, Short Tons or Metric Tons are acceptable

Provide all other information required to the best of your ability.

Section 2 - For commercial fishing vessels, mark all gears that the vessel may use to harvest highly migratory species. Indicate only whether a recreational vessel is a charter or commercial passenger fishing vessel (CPFV). It is not necessary to list any gear for recreational vessels.

Section 3 - Enter an Employer Identification Number (EIN) if you have one, and the vessel owners' Social Security Number(s). The owner's date of birth will be used as an additional identifier and to establish the two-year renewal date for the permit. Enter the month, day, and year. Contact information for all owners of the vessel is required. If there are more than three owners, use an additional sheet. It is recommended that vessel owners obtain a DUNNS Number by contacting Dunn and Bradstreet at their website: www.dnb.com.

Privacy Act Statement: Federal Regulations (at 50 CFR Part 660) authorize collection of this information. This information is used to verify the identity of the applicant(s) and to accurately retrieve confidential records related to federal commercial fishery permits. Where the requested information is a Social Security Number, disclosure is mandatory in accordance with the Debt Collection Act (31 U.S.C. 7701).

Your Social Security Number (SSN) is confidential and is protected under the Privacy Act. Disclosure of your SSN is mandatory. The primary purpose for requiring the SSN and EIN is to verify the identity of individuals/entities doing business with the government as required by the Debt Collection Improvement Act of 1996 (Public Law 104-134).

Paperwork Reduction Act - Public reporting burden for this collection of information is estimated to average 40 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. 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 requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regional Administrator, National Marine Fisheries Service, 501 West Ocean Blvd., Long Beach, CA 90802-4213.

**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE**

Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

OMB CONTROL NO.: 0648-0204, Expiration Date: 12/31/2006

COASTAL PELAGICS FISHING PERMIT

APPLICATION

**LIMITED ENTRY PERMIT/ PERMIT RENEWAL/PERMIT TRANSFER/CHANGE OF ADDRESS
OR REPLACEMENT OF LOST PERMIT**

ACTION DESIRED (Check appropriate box):

- PERMIT APPLICATION** Complete applicant (1) Vessel information (2).
- PERMIT TRANSFER** Complete applicant (1) Vessel information (2) New permit owner (3) New vessel information (4)
- PERMIT CHANGE OF ADDRESS** Complete applicant (1) Vessel information (2). Put new address in new owner (3).
- REPLACEMENT OF LOST PERMIT** Complete applicant (1) Vessel information (2).

(1) APPLICANT INFORMATION

Name of vessel owner		
Address		
Phone No.	Signature	Date

(2) VESSEL INFORMATION

Vessel Name	Gross Tonnage
Official Number (Coast Guard)	State Official Number

This form is intended to be used for all transfers of limited entry permits to either a new vessel and/or a new owner. If two or more permits are being applied to a larger vessel, more than one form will be needed. Please refer to the implementing regulations at 50 CFR 660.514 for details.

COASTAL PELAGICS FISHING PERMIT

(3) NEW PERMIT OWNER

Name of vessel owner		
Address		
Phone No.	Signature	Date

(4) NEW VESSEL INFORMATION

Vessel Name		Gross Tonnage
Official Number (Coast Guard)	State Official Number	

Comparable capacity means gross tonnage as determined by the formula in 46 CFR 69.209(a) for a vessel not designed for sailing, plus 10 percent of the vessel's calculated gross tonnage.

Gross tonnage (GT) means gross tonnage as determined by the formula in 46 CFR 69.209(a) for a vessel not designed for sailing ($.67 \times \text{length} \times \text{breadth} \times \text{depth}/100$). A vessel's length, breadth, and depth are those specified on the vessel's certificate of documentation issued by the U.S. Coast Guard or state.

* * * * *

Warning: A false statement on this form is punishable by permit sanctions (revocation, suspension, or modification) under 15 CFR part 904, a civil penalty up to \$100,000 under 16 USC 1858, and as a federal crime under 18 USC 1001.

The purpose of this information collection is to limit the number of vessels fishing for coastal pelagic species according to the provisions of the Fishery Management Plan for Coastal Pelagic Species, which was approved by the Secretary of Commerce and implemented by federal regulations on December 15, 1999 (64 FR 69888). The information on this form is mandatory for owners of vessels who wish to participate in the limited entry fishery, and is required by 50 CFR 660.512. 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 requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Public reporting burden for this collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, California 90802-4213.



Federal Register

**Wednesday,
April 7, 2004**

Part II

Department of Commerce

**National Oceanic and Atmospheric
Administration**

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

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

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

RIN 0648-AP42

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

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

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

Management Unit Species

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

Fishing Gear Employed

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

Permits

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

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

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

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

Recording and Recordkeeping

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

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

Bycatch

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

Protected Species and the Framework Process

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

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

Major Issues

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

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

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

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

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

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

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

Comments and Responses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Changes From the Proposed Rule

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

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

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

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

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

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

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

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

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

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

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

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

Classification

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

which case there is no difference from the status quo.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 50 CFR

Part 223

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

Part 224

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

Part 660

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

Dated: March 25, 2004.

Rebecca Lent,

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

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

50 CFR Chapter VI

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

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

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

§ 223.206 [Amended]

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

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

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

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

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

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

* * * * *

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

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

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

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

6. Add Subpart K to read as follows:

Subpart K—Highly Migratory Fisheries

Sec.

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

660.719 Scientific observers.
660.720 Interim protection for sea turtles.

Subpart K—Highly Migratory Fisheries

§ 660.701 Purpose and scope.

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

§ 660.702 Definitions.

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

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

Commercial fishing means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Billfish/Swordfish:

striped marlin (*Tetrapturus audax*)

swordfish (*Xiphias gladius*)

Sharks:

common thresher shark (*Alopias vulpinus*)

pelagic thresher shark (*Alopias pelagicus*)

bigeye thresher shark (*Alopias*

superciliosus)

shortfin mako or bonito shark (*Isurus*

oxyrinchus)

blue shark (*Prionace glauca*)

Tunas:

north Pacific albacore (*Thunnus alalunga*)

yellowfin tuna (*Thunnus albacares*)

bigeye tuna (*Thunnus obesus*)

skipjack tuna (*Katsuwonus pelamis*)

northern bluefin tuna (*Thunnus orientalis*)

Other:

dorado or dolphinfish (*Coryphaena hippurus*)

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

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

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

management measures for highly migratory species fisheries.

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

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

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

Offloading means removing HMS from a vessel.

Permit holder means a permit owner.

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

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

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

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

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

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

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

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

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

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

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

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

§ 660.703 Management area.

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

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

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

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

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

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

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

§ 660.704 Vessel identification.

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

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

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

§ 660.705 Prohibitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 660.706 Pacific Coast Treaty Indian rights.

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

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

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

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

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

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

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

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

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

§ 660.707 Permits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 660.708 Reporting and recordkeeping.

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

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

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

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

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

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

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

the vessel, and the type of fishing gear used.

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

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

§ 660.709 Annual specifications.

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

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

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

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

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

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

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

§ 660.710 Closure of directed fishery.

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

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

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

§ 660.711 General catch restrictions.

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

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

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

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

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

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

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

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

§ 660.712 Longline fishery.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Sea turtle take mitigation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Remove any entangled lines from the bird;

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

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

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

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

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

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

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

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

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

(ii) Able to breathe without noise;

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

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

(v) Feathers are dry.

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

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

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

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

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

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

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

(iii) Remove any entangled lines from the seabird;

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

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

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

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

(d) *Vessel monitoring system.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 660.713 Drift gillnet fishery.

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

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

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

(c) *Protected Resource Area closures.*

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

(i) Pt. Sur at 36° 18.5' N. lat., to

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

to

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

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

to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 660.714 Purse seine fishery. [Reserved]

§ 660.715 Harpoon fishery. [Reserved]

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

§ 660.717 Framework for revising regulations.

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

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

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

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

§ 660.718 Exempted fishing.

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

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

§ 660.719 Scientific observers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 660.720 Interim protection for sea turtles.

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

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

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

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

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

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

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

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

(b) [Reserved]

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based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, because it will have an annual effect on the economy of less than \$100 million. Without the increases/decreases, the Service estimates that it will collect \$1.3 million in fees for immigration and adjudication services for these four small volume applications in FY 1998. With the fee adjustments, the Service will collect approximately \$1.8 million. The implementation of this rule will provide the Service with an additional \$.5 million in revenue over the revenue that would be collected under the old fee structure. This revenue increase is a recovery of costs based on workload volumes required to process these applications.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by revising the entries for the following forms, to read as follows:

§ 103.7 Fees.

*	*	*	*	*
	(b)	*	*	*
	(1)	*	*	*
*	*	*	*	*

Form I-360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant—\$110.00, except there is no fee for a petition seeking classification as an Amerasian.

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Form N-300. For filing an application for declaration of intention—\$50.00.

Form N-336. For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act—\$170.00.

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Form N-470. For filing an application for section 316(b) or 317 of the Act benefits—\$80.00.

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Dated: December 8, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99-32485 Filed 12-14-99; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 660

[Docket No. 990430115-9314-02; I.D. 030299B]

RIN 0648-AL48

Fisheries Off West Coast States and in the Western Pacific; Northern Anchovy/Coastal Pelagic Species Fishery; Amendment 8

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 8 to the Northern Anchovy Fishery Management Plan. This rule removes jack mackerel north of 39° N. lat. from the Pacific Coast Groundfish Fishery Management Plan and adds four species to the management unit of the Coastal Pelagic Species (CPS) (formerly the Northern Anchovy Fishery Management Plan (FMP)); defines a new fishery management area and divides it into a limited entry zone and two new

subareas; establishes a procedure for setting annual specifications including harvest guidelines and quotas; provides for closure of the directed fishery when the directed portion of a harvest guideline or quota is taken; identifies fishing seasons for Pacific sardine and Pacific mackerel; establishes catch restrictions in the limited entry zone and, when the directed fishery for a CPS is closed, limits harvest of that species to an incidental limit set by the Southwest Regional Administrator, NMFS, (Regional Administrator); implements a limited entry program; authorizes the Regional Administrator to issue exempted fishing permits for the harvest of CPS that otherwise would be prohibited; and establishes a framework process by which management decisions could be made without amending the FMP. No regulations are required at this time to implement the overfishing definitions and designation of essential fish habitat (EFH).

The intent of this action is to implement the provisions of Amendment 8 to the Northern Anchovy Fishery Management Plan, which will prevent overfishing, maximize yield from available resources, and control increasing harvesting capacity off the Pacific coast.

DATES: Effective January 14, 2000, except for § 660.502 and § 660.512 which are effective December 15, 1999, and §§ 660.505(a),(b),(g), and 660.511 which are effective January 1, 2000.

ADDRESSES: Copies of Amendment 8, which includes the final supplemental environmental impact statement (FSEIS)/regulatory impact review may be obtained from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, Oregon, 97201. Comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements contained in this rule should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: James Morgan, Sustainable Fisheries Division, NMFS, at 562-980-4030.

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council (Council) submitted Amendment 8 for Secretarial review by a letter dated December 11, 1998. On March 12, 1999,

a notice of availability of the FSEIS for Amendment 8 was published in the **Federal Register** (64 FR 12279). The proposed rule was published on May 25, 1999 (64 FR 28143). The comment period on the FSEIS ended on May 11, 1999. The comment period on the proposed rule ended on July 9, 1999.

On June 10, 1999, the Secretary of Commerce partially approved Amendment 8. Optimum yield (OY) for squid was disapproved because the amendment did not provide an estimate of maximum sustainable yield (MSY), the theoretical concept on which OY and overfishing are based under the Magnuson-Stevens Act. The bycatch provisions were disapproved because Amendment 8 did not contain a standardized reporting methodology to assess the amount and type of bycatch in the fishery and because there is no explanation of whether additional management measures to minimize bycatch and the mortality of unavoidable bycatch are practicable at this time. The Council has directed its CPS Management Team (Management Team) and its CPS Advisory Subpanel (Advisory Subpanel) to begin working to resolve these two issues. All other elements of Amendment 8 were approved.

The requirements of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act, such as defining OY, overfishing, levels at which managed stocks are considered overfished, EFH, and social and economic data on fishing communities were discussed in the preamble to the proposed rule and are not repeated here.

Species in the FMP

Amendment 8 and this final rule place Pacific mackerel (*Scomber japonicus*), Pacific sardine (*Sardinops sagax*), jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opalescens*) in a management unit with northern anchovy (*Engraulis mordax*). All CPS are harvested by a fleet of vessels using mainly roundhaul nets (e.g., purse seines). Managed species are divided into two categories: "Actively managed" and "monitored". Actively managed species are subject to annual harvest limits based on current biomass estimates. There are no mandatory harvest limits for monitored species; however, other management measures, such as area closures, could apply to monitored species. Amendment 8 sets the allowable biological catch (ABC) levels for monitored species well below estimates of MSY to obviate the need for detailed resource assessments until the domestic fishery necessitates active management of these species. Initially,

Pacific sardine and Pacific mackerel are designated as actively managed species, while jack mackerel, northern anchovy, and market squid are monitored species.

In Amendment 11 to the Pacific Groundfish Fishery Management Plan, jack mackerel was removed from that fishery management plan, effective upon implementation of Amendment 8 to the Northern Anchovy Fishery Management Plan.

Fishery Management Areas and Subareas

The fishery management area is the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, bounded in the north by the Provisional International Boundary between the United States and Canada, and bounded in the south by the International Boundary between the United States and Mexico. The fishery management area is divided into subareas for the regulation of fishing for CPS, with the following boundaries: The CPS Limited Entry Zone covers that portion of the EEZ between 39°00'00" N. lat. (off California) and the U.S. Mexico-International Boundary; Subarea A covers that portion of the EEZ between the U.S.-Canada Provisional International Boundary and Pt. Piedras Blancas, California (35°40'00" N. lat.); Subarea B covers that portion of the EEZ between Pt. Piedras Blancas, California, and the U.S.-Mexico International Boundary.

Limited Entry System

A limited entry system is established in the commercial fishery for CPS finfish (squid is not included) south of 39° N. lat. (Pt. Arena, California). Open access will continue north of 39° N. lat. Historically, 99 percent of the sardine resource has been harvested south of Pt. Arena. When abundance is high, fishermen without limited entry permits who are active in more northern areas can benefit from the high abundance by fishing in the open access fishery. When abundance declines, the resource tends to disappear from the north and moves south.

To qualify for a limited entry permit, a vessel must have landed at least 100 metric tons (mt) of CPS finfish from January 1, 1993, through November 5, 1997. The number of vessels qualified for a limited entry permit is estimated to be 70. These vessels have been responsible for approximately 99 percent of the harvest of CPS finfish during the window period.

The limited entry program takes effect on January 1, 2000; that is, fishermen harvesting CPS finfish south of 39° N.

lat. must have a limited entry permit on board their vessels at that time. Applicants for permits should obtain the required forms as soon as possible so that delays in obtaining the required permit can be avoided. The forms can be obtained by writing the Regional Administrator (See **ADDRESSES**), by calling the Sustainable Fisheries Division (See **FOR FURTHER INFORMATION CONTACT**), or by downloading the application from the Southwest Region Web Site at <http://swr.ucsd.edu>. Permits will be issued to the owner of the qualifying vessel and can only be transferred once during the year 2000. This one-time transfer affords the owner of a qualifying vessel the opportunity to upgrade his/her vessel or to replace an aging vessel, and it also allows those who wish to enter the fishery a 1-year opportunity to buy a permit. After the year 2000, a permit cannot be transferred to another person. A permit can only be registered for use with another vessel if the permitted vessel has been lost, stolen, or scrapped, or has been removed from all federally managed fisheries.

Vessels fishing CPS finfish in the limited entry fishery may land no more than 125 mt of CPS from any fishing trip. This limit was designed to curtail increases in harvest capacity.

Many vessels have landed small amounts of CPS for dead bait or for small specialty markets in the past and would not qualify for a limited entry permit. Under the framework provisions of Amendment 8, the Council can recommend that vessels without a permit be allowed to make CPS finfish landings up to a specified amount between 1 and 5 mt under the so-called "exempted trip limit." The final rule initially sets the exempted trip limit at 5 mt. Any change in the exempted trip limit will be implemented through rulemaking. Additionally, all vessels harvesting CPS finfish for live bait are exempt from the limited entry permit provisions.

Framework Process

This rule establishes a framework process to set and adjust fishery specifications and management measures in accordance with procedures and standards described in section 2 of Amendment 8. The framework process consists of two procedural categories: the point-of-concern framework procedure and the socio-economic framework procedure, according to which the Council may recommend and NMFS may approve the establishment and adjustment of management measures. The point-of-concern framework procedure would be

used in response to resource conservation and ecological issues, while the socio-economic framework procedure would be used to address socio-economic issues in the fishery. Under both of these procedures, the Council and NMFS may carry out four types of actions: (1) Automatic actions for non-discretionary actions, which will become effective upon publication of a **Federal Register** notice without prior public notice and opportunity for comment and without a prior Council meeting; (2) notice actions, which will be used for all management actions, except automatic actions, intended to have temporary affect that are either non-discretionary or have probable impacts that were previously analyzed and which will require at least one Council meeting and publication of one **Federal Register** notice; (3) abbreviated rulemakings, which will be used for all discretionary management actions intended to have permanent effect, the impacts of which have not been previously analyzed, and which will require at least one Council meeting and publication of one rule in the **Federal Register**; and (4) full rulemaking actions, which will require at least two Council meetings and publication of proposed and final rules in the **Federal Register** with an opportunity for public comment.

Under the framework system, many different types of actions could be taken to respond quickly to changes in the fishery. For example, actively managed and monitored species could be moved between categories as circumstances require. Other actions include trip frequency limits, area or subarea closures, seasons, size limits, gear limitations, and other appropriate measures. Amendment 8 and this final rule authorize the Council to designate certain management measures as "routine management measures." This designation will enable the Council to modify the measure through the single meeting notice procedure described above.

Harvest Guidelines

The Regional Administrator will calculate the annual harvest guidelines for actively managed CPS based on the estimated biomass, formulas, and the standards set in the FMP. Harvest guidelines for CPS will be calculated using the current biomass estimate multiplied by a fixed harvest rate. The portion of the resource in U.S. waters may change from year to year; the harvest guidelines will be calculated using the best estimate available. The amount of the harvest guideline needed for incidental trip limits when the

fishery is nearing closure may vary depending on when the harvest guideline is projected to be achieved, but the sum of the incidental amount and the amount harvested directly must equal the total harvest guideline.

Following the determination of the estimated biomass, the Management Team and Advisory Subpanel will review the biomass estimate and resulting harvest guideline during a public meeting. Public comments and comments of the Advisory Subpanel will be reported to the Council. After hearing public comments, the Council will either adopt the harvest guideline for the upcoming fishing season or recommend a different harvest guideline, accompanied by a justification for the recommendation. Although there is little flexibility in setting harvest guidelines, errors in calculations and in the way the specific factors were used in determining the biomass are elements that could be examined.

The annual process for calculating harvest guidelines will include public review of the estimated biomass and harvest guidelines before the fishing season begins; however, the Regional Administrator may announce the harvest guideline in the **Federal Register** before the process is completed to help fishermen plan their activities and begin harvesting when the fishing season begins.

Fishing Seasons

This rule sets the Pacific sardine season at January 1 to December 31, or until closed, and the Pacific mackerel season at July 1 to June 30, or until closed. At this time, the California Department of Fish and Game is managing these two species. The Council's Management Team and Advisory Subpanel will meet to review the status of these two resources so that NMFS harvest guidelines can be implemented beginning on January 1, 2000.

This rule supercedes the existing harvest limits for northern anchovy, published in the **Federal Register** on September 2, 1999 (64 FR 48113). Those interim final quotas were issued under regulations that were in effect before this final rule was promulgated.

Comments and Responses

Eleven letters on Amendment 8 and the proposed rule were received from the fishing industry. Most did not believe that there was justification for implementing limited entry in the CPS fishery. Comments are grouped together here, followed by NMFS' responses.

Comment 1: Members of the Advisory Subpanel made decisions about limiting the number of vessels to serve their own interests. As a result, the fleet is too small to harvest the resource available.

Response: The Planning Team recommended a fleet smaller than that preferred by the Advisory Subpanel, pointing out that a smaller fleet was capable of harvesting the MSY of all CPS finfish. The Council recommended a larger fleet after hearing testimony from the Planning Team, Advisory Subpanel, and from processors, who believed that the Planning Team's recommendation for a smaller fleet would not provide a sufficient number of vessels in a situation when a processor needed a supply of one species at a time when most vessels might prefer harvesting a higher valued species. The limited entry fleet established by Amendment 8 is expected to meet the needs of the fishing industry and be capable of harvesting all CPS finfish that are likely to be available.

Comment 2: Limiting the number of vessels is unnecessary. The fleet failed to harvest the sardine quota in 1998 and will not harvest the quota in 1999 because the demand for sardine is limited. If limited entry is needed in the future, the framework process could be used to implement it.

Response: Enough capacity is believed to exist to harvest the MSY of all finfish managed by the FMP. If experience shows that there are not enough vessels, the entry of additional vessels could be allowed using the framework process. However, experience in other fisheries shows that allowing a fleet to grow uncontrollably leads to a larger fleet than necessary, and removing excess capacity is often difficult and costly.

Comment 3: Trip limits are inefficient because restricting vessels to a certain tonnage each day increases costs.

Response: The trip limit in the limited entry fishery is a limitation on the number of metric tons per trip (initially set at 125 mt/trip), not per day. No vessel initially permitted in the fishery is expected to be capable of landing 125 metric tons. Therefore, the initial trip limit is not expected to impose inefficiencies on the fishery. As many trips as necessary can be completed to satisfy processors' needs. Trip limits as used in the coastal pelagics fishery are different from those in other fisheries. The trip limit was imposed to avoid rapid expansion of the fleet, not to spread the harvest over the year or to limit the capabilities of the existing fleet.

Comment 4: Amendment 8 does not assess the capacity that U.S. processors can, or the extent that U.S. processors will, process the OY of coastal pelagic species.

Response: The recent increase in abundance of Pacific sardine has been dramatic. In response to the increase, new processing capacity has been added in southern and central California, and there is an active search by processors for additional markets. Processing capacity is expected to rise and fall with available market demand. Nevertheless, a better idea of how much fish will be processed by domestic processors will be gained from experience as processors adapt to market conditions. At this time, there appears to be enough potential processing capacity to satisfy available markets.

Comment 5: The limited entry system allocates fishing privileges unnecessarily and in a manner that is unfair to existing fishermen. A combination of squid and finfish landings as qualifying criteria would be more equitable.

Response: Vessels that primarily land squid qualify for a limited entry permit if at least 100 mt of CPS finfish was landed during the window period (average of 20 mt/year). Using squid as a qualifying species was an option in Amendment 8, but was not adopted because the fleet would have included many vessels that landed no CPS finfish. The result would have been a much larger fleet with vessels that have never landed CPS finfish receiving a permit that applies only to finfish while some vessels that actually targeted CPS finfish would have been eliminated from the fishery.

Comment 6: Amendment 8 does not, as required by Section 303(a)(4)(A) of the Magnuson-Stevens Act, assess and specify the capacity and the extent to which fishing vessels of the United States, on an annual basis will harvest the OY of CPS finfish. Amendment 8 focuses on the number of vessels rather than the capacity of vessels.

The importance of carrying capacity is apparent if one looks at the practices of the Inter-American Tropical Tuna Commission (IATTC), which tracks closely the capacity of individual vessels in the various tuna fleets as well as the harvesting rates of individual vessels.

Response: The harvesting capacity of the fleet was assessed in Amendment 8 by examining a combination of what vessels can physically hold and how many trips they can make during the year. Assuming a modest harvest rate by existing vessels, the MSY of finfish likely to be available could be harvested

in a 6-month season. The underlying purpose of determining domestic capacity is to make fishery resources available to U.S. fishermen before making them available to foreign fishermen. The capacity of each individual vessel does not need to be determined to meet the requirements of the Magnuson-Stevens Act.

The IATTC keeps rigorous records of hold capacity of individual vessels. In the tuna fishery, however, a substantial amount of harvested fish is at sea at any particular moment. To determine when quotas will be reached, the IATTC needs to know how much fish individual vessels hold and how much fish a vessel can harvest each day. To manage quotas on coastal pelagic species, all that needs to be known is how much is landed. The IATTC could not manage tuna based only on landings.

Comment 7: Amendment 8 violated procedural safeguards of the Magnuson-Stevens Act with regard to public review and analysis of the provisions that severely curtail the transferability of permits after the year 2000.

Response: Non-transferable permits were an option in Amendment 8 through several drafts of the sections on limited entry and was available for public review and comment. The option was included in the draft amendment dated August 1998, and the option was available for public review and comment at the public hearings chaired by the Council. The provisions have been implemented by notice-and-comment rulemaking under the Administrative Procedure Act.

Comment 8: Amendment 8 shows that the annual number of roundhaul vessels that have landed CPS during 1981–1997 has changed substantially from year to year. Since the vessels are not listed by official number and name, the variation may be due to duplication.

Response: To determine potential fleet size, the Planning Team used data from the Pacific Fishery Information Network. When vessels landed catch at more than one port, the port of landing was taken to be where most of the landings were made. Effort was taken to minimize the possibility of duplication.

Comment 9: Amendment 8 takes an overly optimistic view of the harvesting capacity of the coastal pelagics fleet. Historical records do not show such high harvests. There are no data to support the high harvests needed per vessel to land more than 400,000 mt in a 6-month period.

Response: As stated in comment 6, the estimate of a 6-month season to harvest the MSY of all species likely to be available may be inexact. Nevertheless, the goal of Amendment 8

is not to achieve the number of vessels that will be needed to harvest the full quotas for coastal pelagic species during years of particularly high stock abundance. The goal of limited entry is to ensure that there is no more capital invested in the fishery than necessary. As stated in the amendment, wide variability in the coastal pelagic resources is inevitable. Presently, northern anchovy is at relatively low biomass levels and has a limited market. The sardine resource is increasing, but demand has not increased as rapidly as the resource. The Pacific mackerel quota is larger in 1999 than in recent years, but it is uncertain whether the full market potential will be realized. Amendment 8 concludes that about 70 vessels will be sufficient to meet the varied objectives of the FMP.

In addition to the harvesting that occurs in the limited entry fishery, when one or more resources exhibit large abundance, any vessel may harvest north of 39° N. lat. without a limited entry permit. If OY is not being taken because of overly restrictive management, the Council and NMFS will adjust the system as appropriate.

Comment 10: The Council did not take into account the present participation and importance of the CPS finfish fishery as it affects the commercial fishing community in San Diego County.

Response: Amendment 8 establishes liberal qualifying criteria that will make it unlikely that vessels dependent on CPS finfish will be excluded from the fishery. The Magnuson-Stevens Act requires that each plan or amendment include a fishery impact statement that assesses the effects, if any, of the conservation and management measures on participants in the fisheries and on fishing communities. Although the analysis may not have addressed all of the particular impacts of Amendment 8 on a specific fishing community such as the commercial fishing community in San Diego County, the limited entry scheme, besides preventing overcapitalization, is designed to protect historic participation in the fishery while providing maximum benefits to all users. Provisions for small and incidental harvesters to maintain their catches prevent individuals from being penalized or from being excluded from the fishery. Although CPS finfish are commonly low-valued species, when the abundance of CPS finfish is large and market conditions make harvesting feasible, any harvester that has landed minimal or no CPS finfish may gain benefits from the fishery by participating in the open access fishery north of 39° N. lat.

Comment 11: The provision to allow only 1 year to upgrade a vessel is too restrictive. The restriction on transfers combined with the trip limit is extremely inefficient.

Response: Amendment 8 does not restrict improvements to existing vessels; it strictly limits registering a limited entry permit with an entirely different vessel. This rule does not restrict a fisherman's choice to increase horsepower, install a refrigeration system, enlarge hold capacity, or make any other changes to improve an existing vessel. By implementing a trip limit and regulating transfers to control expansion of the fleet, NMFS avoided a complicated system of regulations governing horsepower, vessel length, and hold capacity. Any potential inefficiencies created by the limited entry program are expected to be outweighed by controlling increases in harvesting capacity.

NMFS Action

The administrative procedures needed to implement a limited entry permit system are being made effective upon the date of publication in the **Federal Register** of the final rule. The effectiveness of the substantive measures of Amendment 8 is being delayed until January 1, 2000.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648-0204 for § 660.512.

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Changes to the Proposed Rule

NMFS has made a number of changes to the proposed rule. In section 660.502, the phrase "as used in this subpart" has been removed from the definitions for "owner" and "person." Also, a definition of "prohibited" "species" has been added for clarity. Section 660.505(f) has been revised to indicate that when fishing for CPS, it is unlawful for any individual to fail to return a prohibited species to the sea immediately with a minimum of harm. This section has also been revised to make it consistent with the language in section 660.511(e) regarding the immediate release of prohibited species. Section 660.506 has been revised to

indicate that the only gear authorized for use in the reduction fishery for northern anchovy off California is round haul nets that have a minimum wet-stretch mesh size of 10/16 of an inch (1.59 cm) excluding the bag portion of a purse seine. Also, the last sentence that discusses other gear used in the CPS fisheries has been deleted. Section 660.512(b) has been revised to indicate that a limited entry permit for a vessel will be issued only if that vessel landed 100 mt of CPS finfish from January 1, 1993, through November 5, 1999. Section 660.512(c) has been revised to indicate that a vessel owner applying for issuance, renewal, transfer, or registration of a limited entry permit must prove that the qualification requirements are met by submitting the specified documentation. Section 660.512(g) regarding the process for appealing the initial issuance of a permit has been revised to indicate that the Sustainable Fisheries Division issues the permit and not the Regional Administrator.

Classification

The Regional Administrator, Southwest Region, NMFS, determined that Amendment 8 is necessary for the conservation and management of the coastal pelagics fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council prepared an FSEIS for Amendment 8. A notice of availability for Amendment 8 was published on March 26, 1999 (64 FR 14720). Amendment 8 contains a framework management process that makes it possible for the Council to change and modify management procedures in a timely and efficient manner without amending the FMP. The framework management process will allow the Council to act quickly to address resource conservation and ecological issues. A limited entry program will control the expansion of fishing effort. The benefits of limited entry are primarily socioeconomic because limited entry prevents excess invested capital and reduces the likelihood of detrimental environmental effects, as open access fisheries tend to reduce efficiency and increase pressure on fishermen to overharvest fishery resources. Pacific sardine and Pacific mackerel are designated as actively managed, and are subject to species-specific controls. Allowable harvest is based on MSY and the importance of each species as forage for other fish, marine mammals, and birds. This approach is expected to minimize environmental impacts. Northern anchovy, jack mackerel, and market

squid are designated as monitored species. No current biomass estimates are determined for these monitored species, although a constant ABC for each species is based on the long-term yield of each species. This approach is expected to minimize environmental impacts. Although Northern anchovy and jack mackerel may be considered underutilized species, increasing the harvest of these species will only occur following additional review. Almost nothing is known about market squid. However, an aggressive research program is underway to define the status of the resource, develop a management program, and minimize any possible environmental impacts resulting from their harvest.

The Assistant Administrator for Fisheries, NOAA, for good cause, finds under 5 U.S.C. 553(d)(3), that a 30-day delay in effectiveness for those provisions of the final rule that authorize processing of applications for limited entry permits would be contrary to the public interest. Making these provisions effective as of the date of publication of this rule will ensure that applicants for limited entry permits have sufficient time to submit their applications and have them reviewed before the requirement to have permits onboard fishing vessels is enforced beginning on January 1, 2000.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The information collection for the limited entry permit application has been approved by OMB, under OMB control number 0648-0204 for Federal fishing permits. The public reporting burden for this requirement is estimated to be 30 minutes for a limited entry permit application, 30 minutes for requesting the transfer of a permit, and 2 hours to prepare a request for the appeal of a decision to deny a permit. The additional permit qualification documentation and burden of proof is estimated to take 1 hour per response. 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. The requirement to affix the official number of the vessel has been approved by OMB under OMB control number 0648-0361. The public reporting burden for this requirement is estimated to be 45 minutes to affix the official number of a vessel to its bow and weather deck. Send comments regarding these burden estimates or any other aspect of the data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to OMB, Washington, DC 20503 (ATTN: NOAA Desk Officer).

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 requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Informal consultations under the Endangered Species Act were both concluded with NMFS and the U.S. Fish and Wildlife Service on June 10, 1999. As a result of these informal consultations, the Regional Administrator determined that fishing activities conducted under this rule are not likely to adversely affect endangered or threatened species or critical habitat.

A second informal consultation was initiated with the Protected Resources Division, Southwest Region, regarding the effects of Amendment 8 on eight salmon and steelhead evolutionary significant units declared as threatened in March 1999. Included in the consultation were Coastal California Chinook and Central Valley Spring Chinook, which are pending listing as threatened. On September 2, 1999, a determination was received declaring that Amendment 8 would not likely adversely affect these listed species and those pending listing.

List of Subjects

15 CFR Part 902

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 7, 1999.

Penelope D. Dalton,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, and 50 CFR part 660, are amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by removing § 660.505 and its corresponding OMB number—0306 and by adding under 50 CFR the following entries in numerical order:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *
(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648—)
50 CFR:	
* * * * *	
660.504	—0361
660.512	—0204
* * * * *	

50 CFR CHAPTER VI

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

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

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

§ 660.302 [Amended]

2. In § 660.302, under the definition of “Groundfish” and under the term “Roundfish,” remove the text “jack mackerel (north of 39° N. lat.), *Trachurus symmetricus*.”

3. In § 660.337, paragraph (a)(1) is revised to read as follows:

§ 660.337 Limited entry permits—“designated species B” endorsement.

(a) * * *

(1) *General. Designated species* means Pacific whiting and shortbelly rockfish. Bycatch allowances in fisheries for these species will be established using the procedures specified for incidental

allowances in joint venture and foreign fisheries in the PCGFMP.

* * * * *

4. Revise Subpart I to read as follows:

Subpart I—Coastal Pelagics Fisheries

Sec.

660.501	Purpose and scope.
660.502	Definitions.
660.503	Management subareas.
660.504	Vessel identification.
660.505	Prohibitions.
660.506	Gear restrictions.
660.507	Closed areas to reduction fishing.
660.508	Annual specifications.
660.509	Closure of directed fishery.
660.510	Fishing seasons.
660.511	Catch restrictions.
660.512	Limited entry fishery.
660.513	Permit conditions.
660.514	Transferability.
660.515	Renewal of limited entry permits.
660.516	Exempted fishing.
660.517	Framework for revising regulations.

Figure 1 to Subpart I—Existing California Area Closures

Subpart I—Coastal Pelagics Fisheries

§ 660.501 Purpose and scope.

This subpart implements the Fishery Management Plan for Coastal Pelagic Species (FMP). These regulations govern commercial fishing for CPS in the EEZ off the coasts of Washington, Oregon, and California.

§ 660.502 Definitions.

In addition to the definitions in the Magnuson-Stevens Act and in § 600.10 of this chapter, the terms used in this subpart have the following meanings:

Actively managed species (AMS) means those CPS for which the Secretary has determined that harvest guidelines or quotas are needed by Federal management according to the provisions of the FMP.

Advisory Subpanel (AP) means the Coastal Pelagic Species Advisory Subpanel that comprises members of the fishing industry and public appointed by the Council to review proposed actions for managing the coastal pelagic fisheries.

Biomass means the estimated amount, by weight, of a coastal pelagic species population. The term biomass means total biomass (age 1 and above) unless stated otherwise.

Coastal pelagic species (CPS) means northern anchovy (*Engraulis mordax*), Pacific mackerel (*Scomber japonicus*), Pacific sardine (*Sardinops sagax*), jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opelescens*).

Coastal Pelagic Species Management Team (CPSMT) means the individuals appointed by the Council to review, analyze, and develop management measures for the CPS fishery.

Council means the Pacific Fishery Management Council, including its CPSMT, AP, Scientific and Statistical Committee (SSC), and any other committee established by the Council.

Finfish means northern anchovy, Pacific mackerel, Pacific sardine, and jack mackerel.

Fishery Management Area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, bounded in the north by the Provisional International Boundary between the United States and Canada, and bounded in the south by the International Boundary between the United States and Mexico.

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

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

Harvesting vessel means a vessel involved in the attempt or actual catching, taking or harvesting of fish, or any activity that can reasonably be expected to result in the catching, taking or harvesting of fish.

Land or Landing means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish onboard the vessel are counted as part of the landing.

Limited entry fishery means the commercial fishery consisting of vessels fishing for CPS in the CPS Management Zone under limited entry permits issued under § 660.512.

Live bait fishery means fishing for CPS for use as live bait in other fisheries.

Monitored species (MS) means those CPS the Secretary has determined not to need management by harvest guidelines or quotas according to the provisions of the FMP.

Nonreduction fishery means fishing for CPS for use as dead bait or for processing for direct human consumption.

Owner, means a person who is identified as the current owner in the Certificate of Documentation (CG-1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel.

Person, 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 preparing or packaging coastal pelagic species to render the fish suitable for human consumption, pet food, 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 there is additional preparation.

Prohibited Species means all species of trout and salmon (*Salmonidae*) and Pacific halibut (*Hippoglossus stenolepis*).

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

Reduction fishery means fishing for CPS for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products, or byproducts for purposes other than direct human consumption.

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

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the year for specific purposes, such as for individual harvesting groups to ensure equitable distribution of the resource or to allow for uncertainties in preseason estimates of DAP and JVP.

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

Totally lost means that the vessel being replaced no longer exists *in specie*, or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

Trip limit means the total allowable amount of a CPS species by weight or by percentage of weight of fish on board the vessel that may be taken and retained, possessed, or landed from a single fishing trip by a vessel that harvests CPS.

§ 660.503 Management subareas.

The fishery management area is divided into subareas for the regulation of fishing for CPS, with the following designations and boundaries:

(a) *CPS Limited Entry Zone* means the EEZ between:

(1) Northern boundary—at 39°00'00" N. lat. off California; and

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

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

(b) *Subarea A* means the EEZ

between:

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

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

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

and

(2) Southern boundary—at 35°40'00" N. lat. (Pt. Piedras Blancas).

(c) *Subarea B* means the EEZ between:

(1) Northern boundary—35°40'00" N. lat. (Pt. Piedras Blancas); and

(2) Southern boundary—the United States-Mexico International Boundary described in paragraph (a)(2) of this section.

§ 660.504 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.

§ 660.505 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) In the CPS Limited Entry Zone, take and retain, possess or land more than 5 mt of CPS finfish, other than live bait, on a harvesting vessel without a limited entry permit.

(b) In the CPS Limited Entry Zone, take and retain, possess or land more than 125 mt of CPS finfish on a harvesting vessel.

(c) Sell CPS without an applicable commercial state fishery license.

(d) Fish in the reduction fishery for CPS in any closed area specified in § 660.507.

(e) Fish in the reduction fishery for northern anchovy using gear not authorized under § 660.506.

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

(g) Falsify or fail to affix and maintain vessel markings as required by § 660.504.

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

(i) When a directed fishery has been closed, take and retain, possess, or land more than the incidental trip limit announced in the **Federal Register**.

(j) 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.

(k) Falsify or fail to make and/or file any and all reports of fishing, landing, or any other activity involving CPS, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.3.

(l) Fail to carry aboard a vessel that vessel's limited entry permit issued under § 660.512 or exempted fishing permit issued under § 660.516.

(m) Make a false statement on an application for issuing, renewing, transferring, or replacing a limited entry permit for the CPS fishery.

§ 660.506 Gear restrictions.

The only fishing gear authorized for use in the reduction fishery for northern anchovy off California are round haul nets that have a minimum wet-stretch mesh size of 10/16 of an inch (1.59 cm) excluding the bag portion of a purse seine. The bag portion must be constructed as a single unit and must not exceed a rectangular area, adjacent to 20 percent of the total corkline of the purse seine. Minimum mesh size requirements are met if a stainless steel wedge can be passed with only thumb pressure through 16 of 20 sets of 2 meshes each of wet mesh. The wedges used to measure trawl mesh size are made of 20 gauge stainless steel and will be no wider than 10/16 of an inch (1.59 cm) less one thickness of the metal at the widest part.

§ 660.507 Closed areas to reduction fishing.

The following areas are closed to reduction fishing:

(a) *Farallon Islands closure* (see Figure 1 to this subpart). The portion of Subarea A bounded by—

(1) A straight line joining Pigeon Point Light (37°10.9' N. lat., 122°23.6' W. long.) and the U.S. navigation light on Southeast Farallon Island (37°42.0' N. lat., 123°00.1' W. long.); and

(2) A straight line joining the U.S. navigation light on Southeast Farallon Island (37°42.0' N. lat., 123°00.1' W. long.) and the U.S. navigation light on Point Reyes (37°59.7' N. lat., 123°01.3' W. long.).

(b) *Subarea B closures*. Those portions of Subarea B described as—

(1) *Oxnard closure* (see Figure 1 to this subpart). The area that extends offshore 4 miles from the mainland shore between lines running 250° true from the steam plant stack at Manadalay Beach (34°12.4' N. lat., 119°15.0' W. long.) and 220° true from the steam plant stack at Ormond Beach (34°07.8' N. lat., 119°10.0' W. long.).

(2) *Santa Monica Bay closure* (see Figure 1 to this subpart). Santa Monica Bay shoreward of that line from Malibu Point (34°01.8' N. lat., 118°40.8' W. long.) to Rocky Point (Palos Verdes Point) (33°46.5' N. lat., 118°25.7' W. long.).

(3) *Los Angeles Harbor closure* (see Figure 1 to this subpart). The area outside Los Angeles Harbor described by a line extending 6 miles 180° true from Point Fermin (33°42.3' N. lat., 118°17.6' W. long.) and then to a point located 3 miles offshore on a line 225° true from Huntington Beach Pier (33°39.2' N. lat., 118°00.3' W. long.).

(4) *Oceanside to San Diego closure* (see Figure 1 to this subpart). The area 6 miles from the mainland shore south of a line running 225° true from the tip of the outer breakwater (33°12.4' N. lat., 117°24.1' W. long.) of Oceanside Harbor to the United States-Mexico International Boundary.

§ 660.508 Annual specifications.

(a) The Regional Administrator will determine the harvest guidelines or quotas for all AMS from the estimated biomass and the formulas in the FMP.

(b) Harvest guidelines or quotas, including any apportionment between the directed fishery and set-aside for incidental harvest, will be published in the **Federal Register** before the beginning of the relevant fishing season.

(c) The announcement of each harvest guideline or quota will contain the following information:

(1) A summary of the status of AMS and MS;

(2) The estimated biomass on which the harvest guideline or quota was determined;

(3) The portion, if appropriate, of the harvest guideline or quota set aside to allow for incidental harvests after closure of the directed fishery;

(4) The estimated level of the incidental trip limit that will be allowed after the directed fishery is closed; and

(5) The allocation, if appropriate, between Subarea A and Subarea B.

(d) Harvest guidelines and quotas will receive a public review according to the following procedure:

(1) A meeting will be held between the Council's CPSMT and AP, where the estimated biomass and the harvest guideline or quota will be reviewed and public comments received. This meeting will be announced in the **Federal Register** before the date of the meeting, if possible.

(2) All materials relating to the biomass and harvest guideline or quota will be forwarded to the Council and its Scientific and Statistical Committee and will be available to the public from the Regional Administrator.

(3) At a regular meeting of the Council, the Council will review the estimated biomass and harvest guideline or quota and offer time for public comment. If the Council requests a revision, justification must be provided.

(4) The Regional Administrator will review the Council's recommendations, justification, and public comments and base his or her final decision on the requirements of the FMP.

§ 660.509 Closure of directed fishery.

When the directed fishery portion of the harvest guideline or quota is estimated to be taken, the Regional Administrator will announce in the **Federal Register** the date of closure of the directed fishery for CPS and the amount of the incidental trip limit that will be allowed.

§ 660.510 Fishing seasons.

All seasons will begin at 0001 hours and terminate at 2400 hours local time. Fishing seasons for the following CPS species are:

(a) *Pacific sardine*. January 1 to December 31, or until closed under § 660.509.

(b) *Pacific mackerel*. July 1 to June 30, or until closed under § 660.509.

§ 660.511 Catch restrictions.

(a) All CPS harvested shoreward of the outer boundary of the EEZ (0–200 nautical miles off shore) will be counted toward the catch limitations specified in this section.

(b) The trip limit for harvesting vessels fishing in the CPS Limited Entry

Zone for CPS other than live bait without a limited entry permit is 5 mt tons of all CPS finfish combined.

(c) The trip limit for vessels with a limited entry permit on a fishing trip in which the vessel fishes or lands fish in the Limited Entry Zone is 125 mt of all CPS finfish combined.

(d) After the directed fishery for a CPS is closed under § 660.509, no person may take and retain, possess or land more of that species than the incidental trip limit set by the Regional Administrator.

(e) While fishing for CPS, all species of trout and salmon (*Salmonidae*) and Pacific halibut (*Hippoglossus stenolepis*) are prohibited species and must be released immediately with a minimum of injury.

§ 660.512 Limited entry fishery.

(a) *General.* (1) This section applies to fishing for or landing CPS finfish in the limited entry fishery in the Limited Entry Zone.

(2) Effective January 1, 2000, the owner of a vessel with more than 5 mt of CPS finfish on board in the CPS Limited Entry Zone, other than live bait, must have a limited entry permit registered for use with that vessel.

(3) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) qualifies to be issued or may hold, by ownership or otherwise, a limited entry permit.

(b) *Initial qualification.* (1) A limited entry permit for a vessel will be issued only if that vessel landed 100 mt of CPS finfish from January 1, 1993, through November 5, 1997.

(2) A limited entry permit will be issued only to the current owner of the vessel, unless:

(i) The previous owner of a vessel qualifying for a permit, by the express terms of a written contract, reserved the right to the limited entry permit, in which case the limited entry permit will be issued to the previous owner based on the catch history of the qualifying vessel, or

(ii) A vessel that would have qualified for a limited entry permit was totally lost prior to issuance of a limited entry permit. In this case, the owner of the vessel at the time it was lost retains the right to a permit for a replacement vessel, unless the owner conveyed the right to another person by the express terms of a written contract. The lost vessel must be replaced within 2 years of the date that the qualifying vessel was lost, and the replaced vessel must be of equal or less net tonnage.

(c) *Documentation and burden of proof.* A vessel owner (or person holding limited entry rights under the

express terms of a written contract as specified in paragraph (a)(2)) of this section applying for issuance, renewal, transfer, or registration of a limited entry permit must prove that the qualification requirements are met by submitting the following documentation:

(1) A certified copy of the vessel's documentation as a fishing vessel of the United States (U.S. Coast Guard or state) is the best evidence of vessel ownership;

(2) A certified copy of a state fish landing receipt is the best evidence of a landing of a vessel;

(3) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights; and

(4) Other relevant, credible evidence that the applicant may wish to submit or that the SFD may request or require.

(d) *Fees.* The Regional Administrator may charge fees to cover administrative expenses related to issuing limited entry permits, as well as renewing, transferring, and replacing permits. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(e) *Initial decisions.* (1) The SFD will make initial decisions regarding issuing, renewing, transferring, and registering limited entry permits.

(2) Adverse decisions shall be in writing and shall state the reasons for the adverse decision.

(3) The SFD may decline to act on an application for issuing, renewing, transferring, or registering a limited entry permit and will notify the applicant, if the permit sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

(f) *Initial issuance.* (1) The SFD will issue limited entry permits.

(2) In order to receive a final decision on a limited entry permit application before January 1, 2000, an applicant must submit the application to the SFD on or before February 14, 2000.

(3) A separate, complete, and accurate application form, accompanied by any required supporting documentation and the appropriate fee, must be submitted for each vessel for which a limited entry permit is sought.

(4) Upon receipt of an incomplete or improperly executed application, the SFD will notify the applicant of the deficiency. If the applicant fails to

correct the deficiency within 30 days following the date of notification, the application will be considered void.

(5) The SFD may request further documentation before acting on an application.

(6) The SFD will not accept applications for a limited entry permit after July 1, 2000.

(g) *Appeals.* (1) Any applicant for an initial permit may appeal the initial issuance decision to the Regional Administrator. To be considered by the Regional Administrator, such appeal must be in writing and state the reasons for the appeal, and must be submitted within 30 days of the action by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(2) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal.

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

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

(5) The Regional Administrator may adopt the hearing officer's

recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action shall constitute final action for the agency for the purposes of the APA.

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

§ 660.513 Permit conditions.

(a) A limited entry permit expires on failure to renew the limited entry permit as specified in § 660.515.

(b) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will be registered for use with a particular vessel at the time the permit is issued, renewed, or transferred.

(c) Limited entry permits issued or applied for under this subpart are subject to sanctions pursuant to the Magnuson-Stevens Act, 16 U.S.C. 1858(g), and 15 CFR part 904, subpart D.

§ 660.514 Transferability.

(a) Upon application by the permit holder, the SFD will process applications for transferring limited entry permits according to this section.

(b) Before January 1, 2001, a limited entry permit may be transferred to a different owner and/or for use with a different vessel. The permit may be transferred only once. No transfer is effective until the permit has been

reissued and is in the possession of the new permit holder.

(c) After December 31, 2000, a permit may not be registered for use with a vessel other than the vessel for which it was registered on December 31, 2000, except as follows:

(1) The vessel to which the permit was registered on December 31, 2000 (the replaced vessel), is totally lost, stolen, or scrapped, such that it cannot be used in a federally regulated commercial fishery, and

(2) The replacement vessel to which the permit will be registered is of equal or less net tonnage than the replaced vessel, and

(3) The replaced vessel is owned by the permit holder.

(d) After December 31, 2000, a limited entry permit may not be transferred to a different owner.

§ 660.515 Renewal of limited entry permits.

(a) Each limited entry permit must be renewed by January 1 of even numbered years.

(b) The SFD will send notices to renew limited entry permits to the most recent address of the permit holder.

(c) The permit owner must provide SFD with notice of any address change within 15 days of the change.

(d) The permit holder must submit applications for renewal of a permit on forms available from the SFD.

(e) The permit owner is responsible for renewing a limited entry permit.

(f) An expired permit cannot be used to fish for CPS in the limited entry fishery.

§ 660.516 Exempted fishing.

(a) *General.* In the interest of developing an efficient and productive

fishery for CPS, the Regional Administrator may issue exempted fishing permits (EFP) for the harvest of CPS that otherwise would be prohibited.

(b) No exempted fishing for CPS 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.

§ 660.517 Framework for revising regulations.

(a) *General.* NMFS will establish and adjust specifications and management measures in accordance with procedures and standards in Amendment 8 to the FMP.

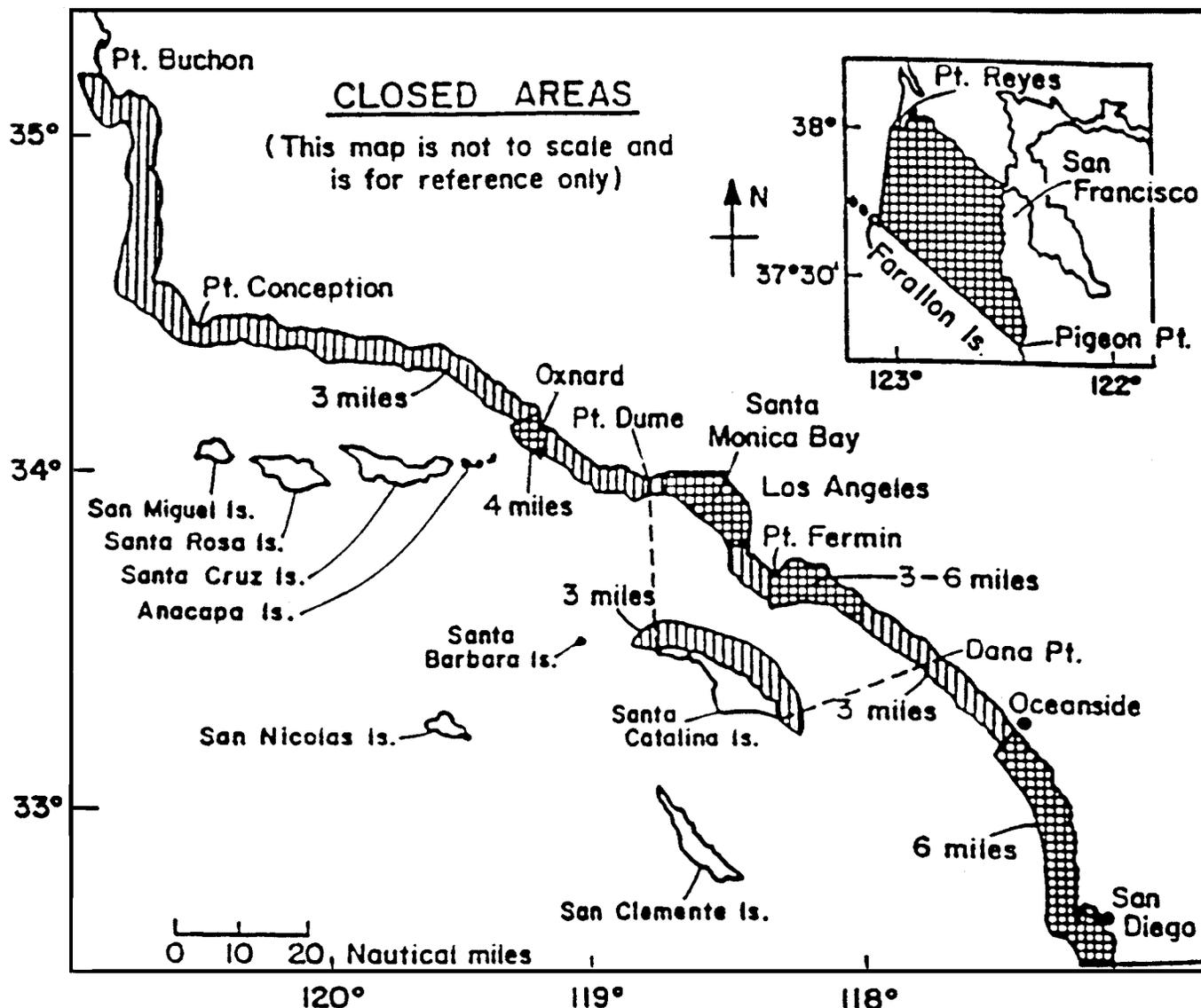
(b) *Annual actions.* Annual specifications are developed and implemented according to § 660.508.

(c) *Routine management measures.* Consistent with section 2.1 of Amendment 8 to 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 2 of Amendment 8 to the FMP and will be published in the **Federal Register**.

Figure 1 to Part 660, Subpart I—Existing California Area Closures (hatched areas extend to 3 miles offshore; cross-hatched areas extend beyond 3 miles offshore) and optional Catalina Channel foreign vessel closure (outlined by dashed lines)

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 BILLING CODE 3510-22-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 99F-1423]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 4,5-dichloro-1,2-dithiol-3-one (also known as 4,5-dichloro-3H-

1,2-dithiol-3-one) as a slimicide in the manufacture of food-contact paper and paperboard. This action is in response to a petition filed by Yoshitomi Fine Chemicals, Ltd.

DATES: The regulation is effective December 15, 1999. Submit written objections and requests for a hearing by January 14, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3098.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 27, 1999 (64 FR 28825), FDA announced that a food additive petition

(FAP 9B4654) had been filed by Yoshitomi Fine Chemicals, Ltd., c/o SRS International Corp., suite 1000, 1625 K St. NW., Washington, DC 20006-1604. The petition proposed to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide for the safe use of 4,5-dichloro-1,2-dithiol-3-one as a slimicide in the manufacture of food-contact paper and paperboard.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of 1,2-dichloroethane and tetrachloroethylene, carcinogenic impurities resulting from the manufacture of the additive.

Magnuson-Stevens Fishery Conservation and Management Act

Public Law 94-265

As amended through October 11, 1996

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853

95-354, 99-659, 101-627, 104-297

(a) **REQUIRED PROVISIONS.**--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are--

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify--

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--

(A) participants in the fisheries and fishing communities affected by the plan or amendment; and

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of

bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority--

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

97-453, 99-659, 101-627, 102-251, 104-297

(b) DISCRETIONARY PROVISIONS.--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may--

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to--

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the--

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account--

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

(F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; and

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

(c) PROPOSED REGULATIONS.--Proposed regulations which the Council deems necessary or appropriate for the purposes of--

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 5, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Peter Christopher, 978-281-9288 or peter.christopher@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

National Marine Fisheries Service (NMFS) Northeast Region manages the Atlantic sea scallop (scallop) fishery of the Exclusive Economic Zone (EEZ) off the East Coast under the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP). The regulations implementing the Scallop FMPs are at 50 CFR part 648. On June 16, 2006, NMFS implemented an emergency action that re-activated the industry-funded observer program in the Scallop FMP, wherein scallop vessels are required to procure observer coverage from an approved observer service provider. The observer service providers are required to submit an application to NMFS for approval, and once approved, are required to submit various information to support the observer program. Scallop vessel owners or operators are required to contact approved observer service providers in order to procure an observer for trips on which an observer is required. NMFS requests information from candidate scallop fishery observer service providers to evaluate applications for approval. NMFS also requests information from approved scallop fishery observer service providers to monitor activity for compliance with observer service provider requirements and to evaluate observer data; and information from participating scallop fishery participants to assign observers to selected vessels.

II. Method of Collection

Paper applications and telephone calls are required from participants. Facsimile transmission of paper forms, mail, and express mail are the methods of information submittal.

III. Data

OMB Number: 0648-0546.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions, and business or other for-profits organizations.

Estimated Number of Respondents: 805.

Estimated Time per Response: Application for approval of observer service provider, 10 hours; applicant response to denial of application for approval of observer service provider, 10 hours; observer service provider request for observer training, 30 minutes; observer deployment report, 10 minutes; observer availability report, 10 minutes; safety refusal report, 30 minutes; submission of raw observer data, 5 minutes; observer debriefing, 2 hours; biological samples, 5 minutes; rebuttal of pending removal from list of approved observer service providers, 8 hours; vessel request to observer service provider for procurement of a certified observer, 25 minutes; vessel request for waiver of observer coverage requirement, 5 minutes.

Estimated Total Annual Burden Hours: 611.

Estimated Total Annual Cost to Public: \$6,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 29, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-10501 Filed 7-5-06; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southwest Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 5, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia A. Culver, 562-980-4239 or Trisher.Culver@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Permits are required for persons to participate in Federally-managed fisheries off the West Coast. There are two types of permits, for coastal pelagic and highly migratory fisheries. Appeals and certain waiver requests can also be submitted. Transfer applications may also be required. Permits for the Western Pacific fisheries have been included in this information collection, but will now be covered under 0648-0490, Pacific Islands Permit Family of Forms.

The permit application forms provide basic information about permit holders and the vessels and gear being used. This information is important for understanding the nature of the fisheries and provides a link to participants. It also aids in enforcement of regulations.

II. Method of Collection

Forms are available on the Internet; paper applications are also available and may be submitted by mail or FAX.

III. Data

OMB Number: 0648-0204.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,407.

Estimated Time Per Response: Permit applications and transfers, 30 minutes; additional information (when requested) for the coastal pelagic fishery, 1 hour; appeals, 2 hours.

Estimated Total Annual Burden Hours: 333.

Estimated Total Annual Cost to Public: \$575.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 29, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-10502 Filed 7-5-06; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061606A]

Endangered and Threatened Species; Recovery Plans

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability for public review of the draft updated Recovery Plan (Plan) for the fin whale (*Balaenoptera physalus*). NMFS

is soliciting review and comment from the public and all interested parties on the Plan, and will consider all substantive comments received during the review period before submitting the Plan for final approval.

DATES: Comments on the draft Plan must be received by close of business on September 5, 2006.

ADDRESSES: Send comments to Angela Somma, Chief, Endangered Species Division, Protected Resources Division, NMFS. Comments may be submitted by: (1) E-mail:

finwhale.recoveryplan@noaa.gov, include in the subject line the following document identifier: Fin Whale Recovery Plan. E-mail comments, with or without attachments, are limited to 5 megabytes; (2) Chief, Endangered Species Division, 1315 East-West Highway, Silver Spring, MD, 20910; (3) Fax: (301) 427 2523. Interested persons may obtain the Plan for review from the above address or on-line from <http://www.nmfs.noaa.gov/pr/>.

FOR FURTHER INFORMATION CONTACT:

Monica DeAngelis, (562-980-3232), e-mail *Monica.DeAngelis@noaa.gov*; or Shannon Bettridge, (301-713-2322 ext. 141), e-mail *Shannon.Bettridge@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (15 U.S.C. 1531 *et seq.*) requires that NMFS develop and implement recovery plans for the conservation and survival of threatened and endangered species under its jurisdiction, unless it is determined that such plans would not promote the conservation of the species. Accordingly, NMFS provided a contract for preparation of a draft Recovery Plan for fin and sei (*Balaenoptera borealis*) whales that was released for public comment and review in 1998 (63 FR 41802). The draft Recovery Plan for the fin and sei whale was never finalized. NMFS has since determined that the recovery plans for the fin and sei whales should be separated. This Plan updates the 1998 Recovery Plan's information for the fin whale and discusses the natural history, current status, and the known and potential human impacts to fin whales. Actions needed to promote the recovery of this species are identified and discussed. The Plan will be used to direct U.S. activities, and to encourage international cooperation to promote the recovery of this endangered species. NMFS' goal is to restore endangered fin whale populations to the point where they are again secure, self-sustaining members of their ecosystems, and no longer need the protections of the ESA. NMFS will consider all substantive comments and information

presented during the public comment period in the course of finalizing this Plan.

Dated: June 29, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6-10558 Filed 7-5-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061606B]

Endangered and Threatened Species; Recovery Plans

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability for public review of the draft Recovery Plan (Plan) for the sperm whale (*Physeter macrocephalus*). NMFS is soliciting review and comment from the public and all interested parties on the Plan, and will consider all substantive comments received during the review period before submitting the Plan for final approval.

DATES: Comments on the draft Plan must be received by close of business on September 5, 2006.

ADDRESSES: Send comments to Angela Somma, Chief, Endangered Species Division, Office of Protected Resources, NMFS. Comments may be submitted by: (1) E-mail:

spermwhale.recoveryplan@noaa.gov, include in the subject line the following document identifier: Sperm Whale Recovery Plan. E-mail comments, with or without attachments, are limited to 5 megabytes; (2) Mail to: Chief, Endangered Species Division, 1315 East-West Highway, Silver Spring, MD, 20910; (3) Fax: (301) 427 2523.

Interested persons may obtain the Plan for review from the above address or on-line from <http://www.nmfs.noaa.gov/pr/>.

FOR FURTHER INFORMATION CONTACT:

Monica DeAngelis, (562-980-3232), e-mail *Monica.DeAngelis@noaa.gov*; or Shannon Bettridge, (301-713-2322 ext. 141), e-mail *Shannon.Bettridge@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (15