

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek
Departmental Paperwork Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6625
Washington, DC 20230

10/12/2004

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of a new information collection received on 07/19/2004.

TITLE: Southwest Region Logbook Family of Forms

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0498

EXPIRATION DATE: 10/31/2007

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	0	0	0
New	5,096	3,034	2
Difference	5,096	3,034	2
Program Change		3,034	2
Adjustment		0	0

TERMS OF CLEARANCE: None

OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

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
	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
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) (<i>if applicable</i>)	
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, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
SOUTHWEST REGION LOGBOOK FAMILY OF FORMS**

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 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) with the cooperation of state agencies to the extent possible. The plans are intended to regulate fishing so that the long-term productivity of individual species is protected and that optimum yield is achieved from the resources for the benefit of the U.S. The Pacific Council has submitted for approval, partial approval, or disapproval the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS). A proposed rule to implement the FMP is being processed. The FMP establishes basic conservation and management measures applicable to U.S. vessels fishing for managed species. Among the conservation and management measures are permit and reporting requirements for commercial and charter fisheries for HMS as described in this proposal.

The following species would be managed by the FMP:

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)

These species are highly migratory and are harvested in U.S. waters and on the high seas by U.S. fishermen and fishermen of other nations. In the U.S., the migratory patterns of many of the species potentially bring them in varying degree under the jurisdiction of three councils: the Pacific Fishery Management Council, the Western Pacific Fishery Management Council, and the North Pacific Fishery Management Council. The Western Pacific Council has implemented a Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP) governing management of many of the same species in the EEZ of Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and other U.S. possessions in the western Pacific region. Jurisdiction in the western Pacific extends only to the various EEZs in the western Pacific and to those vessels that may fish on the high seas with permits issued under the authority of the Pelagics FMP. The Pacific Council's HMS FMP will complement the western Pacific FMP but will not establish duplicate requirements, even for vessels that sometimes fish in waters under both jurisdictions.

The regulations implementing the HMS FMP will essentially require that operators of any commercial fishing vessels and recreational charter vessels engaged in fishing for HMS maintain and submit logbooks to NMFS or state authorities recording catch and effort for that fishing. However, those requirements would be met for most vessels by reporting in accordance with existing laws and regulations. For example, in several fishery sectors (see Table 1), vessel operators are already required under state law to maintain and submit logbooks to state agencies. The regulations will require that state reporting requirements be met in the manner and on the forms required by the states. State logbook requirements will be used to satisfy Federal information needs. Thus, there is no Federal burden associated with these requirements for drift gillnet, harpoon and charter vessels.

In addition, logbooks recording daily catch and effort statistics are required for fishing activity by vessels fishing on the high seas under the authority of the High Seas Fishing Compliance Act (HSFCA), including longline, high seas troll/baitboat, and high seas purse seine fishing. Those requirements would continue, although they can be met by submitting forms provided by the Southwest Region, NMFS, for reporting under the HMS FMP.

An electronic vessel monitoring system utilizing global positioning by satellite is required equipment on all longline vessels managed under the authority of the FMP. The system is being implemented as a way to monitor vessels to ensure that fishing occurs only in times and areas open to longline fishing, without the need for vessel operators to report positions or for the Coast Guard to commit substantial resources to verifying the effectiveness of the closed areas through sea patrols or aerial surveillance. The system will ensure the ability to track these very mobile and distant water fishing vessels as they shift across high seas fishing areas. Most of the longline vessels now on the west coast formerly fished out of Hawaii and therefore already have VMS units on board. However, these units may not all be operational or may need repair and maintenance. At the very least, vessel operators would have to allow NMFS agents to verify the operational status of the units.

NMFS also has included in the final rule a requirement for operators of longline fishing vessels notify NMFS prior to departing on a fishing trip so that NMFS can determine whether an observer should be placed on the vessel. The final rule (along with a separate rule published under the authority of the Endangered Species Act) essentially prohibits longline fishing for swordfish because of concern for excessive takes of sea turtles. However, longline fishing for tuna and other species would be permitted. It is not known if targeting tuna would have comparable rates of take of sea turtles (or seabirds or other bycatch). NMFS needs to take advantage of the potential to place observers on all trips in which tuna would be targeted so that prospective impacts on sea turtles, seabirds, and other bycatch can be determined.

Therefore, the added burdens under the regulations will be for the troll/baitboat fleet (consisting of an estimated 887 vessels) operating in the EEZ and for the longline fleet (consisting of 20 vessels) to be equipped with operational VMS units and to contact NMFS prior to a trip departure. These are new Federal reporting requirements that result in PRA burdens.

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 logbooks and VMS requirements meet two purposes. The first is basic monitoring of the fishery to obtain information needed by NMFS, the U.S. Coast Guard, and the Council to monitor the activities of the participating vessels and the performance of the fisheries. Knowing the number of vessels, the size of the vessels, and the type of gear employed enables effective monitoring of vessel activity for enforcement and assessment purposes. Logbooks provide critical information on catch and effort to support stock assessments and evaluation of the effects and effectiveness of the management program. VMS units provide confirmation of reported vessel fishing activity locations and can help in validation of logbook records' accuracy.

The requirements would also generate information for evaluating the magnitude and distribution of impacts from any changes in regulations that might occur in the future. The information collected is basic data on catch and effort by species over time. When added to landings data and sales information, this provides a basis for evaluating the monetary and economic values of the fisheries over time and measuring the impacts of changes in regulations. This in turn can provide a basis for determining that changes in conservation and management measures may improve the economic performance of the fishery or for determining the potential adverse effects of more restrictive management measures. Without this information, the likelihood is great that management decisions will be inappropriate and possibly have unintended adverse consequences.

The requirement for longline vessels fishing from west coast ports to carry VMS enables enforcement personnel to determine whether or not vessels are fishing in closed areas. The FMP proposes to close

the EEZ on the west coast to longline vessels but fishing may be conducted on the high seas. A longline fishery closed area under the Pelagics FMP is incorporated into the Pacific Council's FMP. VMS reports provide a basis for targeted air and surface patrols by the U.S. Coast Guard that result in more cost effective and efficient enforcement.

The requirement for longline vessel operators to contact NMFS prior to a trip departure enables NMFS to plan on placement of an observer when it is necessary and appropriate. It is not known if targeting tuna would have comparable rates of take of sea turtles (or seabirds, or other bycatch for that matter), so NMFS needs to maximize the potential to place observers on any trips in which tuna would be targeted.

The information collected is anticipated 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 meets 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 SWR website at <http://nmfs.swr.noaa.gov> will be used to inform the public about logbook and other management program requirements. A Small Entity Compliance Guide is being prepared consistent with the Regulatory Flexibility Act to assist permit holders in understanding the requirements that must be met, including reporting requirements. Required Federal forms and instructions will be made available online along with an explanation of the process for returning them to NMFS. The SWR will also work with state agencies and the Pacific Council to use their web sites and license issuing offices to increase the distribution of information about logbook and other requirements.

4. Describe efforts to identify duplication.

There are collections underway in the form of logbooks required by NMFS and the States of California, Oregon, and Washington that meet some of the needs of NMFS and the Pacific Council for carrying out the FMP. As noted above, these collections will be used in those cases to minimize duplication, and fishery participants will be required to file reports in the manner and form required by State laws and regulations. When new Federal collections are required, existing logbook formats that fishery participants are familiar with will be used to the extent practicable to minimize confusion and incorrect reporting. Through the Pacific Fishery Information Network and other cooperative

arrangements and the Pacific Council, NMFS already works closely with states to minimize collective burdens on the fisheries. This approach was adopted after consulting with the California Department of Fish and Game, the Oregon Department of Fish and Wildlife, and the Washington Department of Fish and Wildlife during the planning process.

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

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 for filling out a logbook is slight relative to the overall cost of fishing. The requirement of VMS equipment is the most costly provision; however, the equipment and its installation is provided at NMFS expense. Fishermen may also connect other communications equipment to the VMS unit to improve their own ability to communicate. No special measures are needed to offset any disproportionate effect on small businesses.

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

An effective logbook system requires that the daily catch during each fishing trip be recorded. The data will not support assessments of the status of stocks if aggregated over time and area of fishing. Further, determinations of the economic status of the fishery are likely to be improved because daily records of catch and effort provide better information for determining fishing costs and cost differentials between days fishing and days searching. However, logbooks that have to be submitted to NMFS will not be due until 30 days following the end of each trip, regardless of the length of the trip.

Daily VMS reports (and more frequent if a vessel is near a closed area) are necessary to ensure adequate monitoring of vessel movements to determine compliance with time and area controls and to facilitate cost effective use of enforcement patrols. Less frequent reports would likely result in higher likelihood of non-compliance with low probability of detection of violations.

Reports made too far in advance of a vessel's departure are likely to result in changes in vessel plans as fishery conditions change rapidly; reports after a departure don't allow NMFS to make a decision to place an observer before the vessel leaves port. In both cases, there is likely to be a resulting loss of data collection opportunity, which could result ultimately in inappropriate management decisions because of poor data. This could adversely affect the fisheries.

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

This collection is not consistent with the guidelines on frequency of reporting with respect to VMS requirements. Only one copy of a logbook needs to be submitted. The regulations do not require that any records be retained past the point of submitting a copy of the logbook to NMFS, although fishers are expected to retain a copy for their own use. Reporting by VMS is automatic and does not require individuals to make reports. Nevertheless, a reporting burden is noted, consistent with the calculation for the VMS system for the longline fishery in the western Pacific. The need for increased frequency is addressed in #6 above.

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.

NMFS has consulted with the fishing industry, the public, the California Department of Fish and Game, the Oregon Department of Fish and Wildlife, and the Washington Department of Fish and Wildlife. The fishing industry includes members of the Pacific Council's Highly Migratory Species Advisory Subpanel, a group made up of members of the fishing industry and public appointed to provide guidance during plan development. Meetings of the Advisory Subpanel and of the plan development team assigned by the Pacific Council to write the FMP were public. The consultations occurred during the planning process of developing the provisions of the FMP and the associated draft regulations, which was from June 1999 to November 2002.

A proposed rule to implement the FMP was published December 10, 2003 (68 FR 68834)(copy attached) to solicit public comment.

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

There are no payments or gifts to respondents.

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

Data submitted on logbook forms will be managed as confidential data, consistent with Section 402(b) of the Magnuson-Stevens Act, which stipulates that data required to be submitted under an FMP shall be confidential and shall not be released except to Federal employees and Council staff responsible for FMP monitoring and development or when required under court order. Data will also be handled consistent with the requirements of NOAA Administrative Order 216-100.

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 are asked of a sensitive nature.

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

Fleets with No New Burden

As noted above, under other laws and regulations, a number of vessels engaged in fishing for HMS out of West Coast ports are required to maintain and submit logbooks of catch and effort data that will contribute to effective monitoring of the fisheries. Reporting under these requirements (including using forms now in use) satisfies the reporting requirements under the HMS FMP. These include:

Drift gillnet: Under the regulations of the states of California and Oregon, drift gillnet vessels are currently required to submit logbook records for all their fishing, and that requirement will continue when the FMP is implemented. They will not be required to report to NMFS under any Federal regulations. Therefore there is no Federal burden under the regulations.

Longline: Longline vessels would be permitted under the FMP to fish only outside the EEZ. They are now currently required to maintain and submit logbooks of daily catch and effort statistics under the HSFCA, and this burden is included in the collection approved for reporting under the HSFCA (OMB Control No. 0648-0349). No additional reporting burden is imposed under these regulations.

Purse seine: Logbooks are already required by Federal Regulations at 50 CFR 300.22 implementing the Tuna Conventions Act of 1950. The regulations implementing the HMS FMP will require that logbook reports be submitted to the Southwest Regional Administrator and not to the IATTC. However, no new burden is imposed as a result of the HMS FMP.

Harpoon: Harpoon vessels are required to maintain and submit logbooks under State of California law, and that requirement will continue when the FMP is implemented. Therefore, there is no Federal reporting burden.

Charter: Recreational charter vessels are required to submit logbooks for each trip under state laws, and those requirements will continue when the FMP is implemented. Therefore, there is no Federal reporting burden.

New Logbook Requirement

Troll/Baitboat Fleet

At the present time, troll and baitboat albacore fishing vessels are required to report on their fishing on the high seas under the HSFCA, but are not required to report on their fishing in the EEZ. Under the regulations to implement the FMP, troll and baitboat albacore fishing vessels will be required to maintain and submit logbooks for all fishing in the EEZ. The troll/baitboat fleet is estimated to consist of 887 vessels, all of which are expected to fish some of the time in the EEZ in an average year. The duration of a fishing trip varies, but for fishing in the EEZ, the majority of vessels take several trips per year lasting only 1-3 days, and the vessels fish fairly close to port. A smaller number of larger vessels (especially high seas vessels) take longer trips (30-60 days) following the fish on their migration along the coast. For purposes of estimating the burden of this collection, it is estimated that 700 vessels take trips averaging 2 days while 187 vessels take trips averaging 45 days; thus, the average trip for the fleet is 11 days. At 5 minutes per page, it takes just under one hour to complete a logbook for the average trip. Assuming that all 887 vessels must report their local fishing, and an average of 3 trips per year, the following annual reporting burden is estimated:

$$887 \text{ vessels} \times 3 \text{ trips per year} \times 1 \text{ hour per trip} = 2,661 \text{ hours}$$

Vessel Monitoring System

Longline vessels fishing under longline limited entry permits under the Pelagics FMP must have VMS, which has been installed at the expense of NMFS. Many if not most of the 20 longline vessels fishing from West Coast ports already have VMS because they originated in Hawaii, where VMS units were required for vessels with western Pacific longline limited entry permits. However, there may be as many as 10 vessels that do not have VMS because they were not Hawaii vessels or they had the VMS units removed or disconnected when they shifted operations to the west coast. At the least, some of these vessels will have to be boarded to have their VMS units inspected and reactivated, possibly with some servicing required. While NMFS will pay for the units and installation, vessel owners whose vessels are not equipped will have to contact NMFS to arrange for installation and initiation of the VMS unit. Also, NMFS will have to check and maintain all 20 units annually.

VMS reporting varies by the type of activity in which the vessel is engaged. When in port, a single, daily position report is made with a burden of 24 seconds per report. When at sea, a daily position report (24 seconds per report) is made once per hour, or 24 reports per day. It is estimated that the 20 longline vessels in the fishery will make an average of 6 trips each year, with an average of 15 days at sea for each trip. Thus, the average vessel will report as follows:

$$\begin{array}{rcl} 90 \text{ days at sea} \times 24 \text{ reports/day} \times 24 \text{ sec/report} & = & 14.4 \text{ hours} \\ 275 \text{ days in port} \times 1 \text{ report/day} \times 24 \text{ sec/report} & = & 1.83 \text{ hours} \end{array}$$

The total VMS reporting burden for the fleet is then 20 x 16.23 hours or 324.6 hours.

VMS installation will be required for the estimated 10 vessels that do not now have VMS units on board. It is estimated that 4hrs/vessel (including time to contact NMFS and make vessel available for installation of VMS unit) will be required for each installation, for a total burden of 40 hours. This is a one-time cost and, for purposes of deriving an annual burden, this is annualized on the same time frame as the permits, or five years; thus the annualized burden is 8 hours.

VMS maintenance will be required annually for all 20 vessels at an estimated burden of 2 hours per vessel (including time to contact NMFS and make VMS unit on vessel available for inspection annually), or a total of 40 hours.

Based on these figures, the estimated total new burden associated with the VMS requirement is (including the time to contact NMFS and arrange for installation) is 372.6 hours.

Pre-trip Reports

It is estimated that no more than 5 vessels will engage in fishing for tuna with longline gear in any year, and the average vessel will make no more than 5 trips. The average pre-trip report will take 5 minutes or less, resulting in an estimate of 125 (2 hours) minutes for this collection.

Total

The total new information collection burden is:

Logbooks	2,661
VMS	372.6
Pre-trip reports	2
Total	3,035.6

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).

A. Mailing Costs

An average trip of 11 days will generate 11 daily logsheets, and assuming that 5-6 logsheets weigh one ounce, then each trip will generate a mailing cost of \$0.60 (\$.37 first ounce + \$.23 each additional ounce). It is estimated that 887 vessels will make 3 trips per, generating a mailing cost per vessel of \$0.60 per trip. Thus, the total estimated mailing cost is 887 vessels x 3 trips per year x \$0.60 per trip = \$1,596.60 per year.

B. VMS

There are no monetary costs to respondents with regard to VMS.

C. Pre-trip Reports

The estimated notification cost is \$1.00 per phone call, or \$25.00 per year (assuming \$1 per call using toll calls to Long Beach from the Port of Los Angeles).

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

Maintain logbook data base system:

$$10\text{hr/month} \times \$36.36/\text{hr} \times 12 \text{ months} = \$4363.20$$

Maintain VMS monitoring station:

$$1\text{hr/day} \times 365 \text{ days} \times \$36.36/\text{hr} = \$13271$$

Pre-trip notices

No cost

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

This collection proposes to impose new requirements and these are program changes.

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

There are no plans at this time for publications based on the collections.

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 for the collection would be displayed.

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

There are no exceptions to the certification statement in Item 19 of OMB 83-I.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

Table 1. Summary of Logbook and VMS Requirements and Collection Burdens

Gear Type (Number of Vessels in Parentheses)	Current Reporting Requirement	Estimated New PRA Burden
Troll/baitboat (887)	HSFCA (high seas only)	EEZ Logbooks: 2661
Drift gillnet (121)	States	None
Longline (20)	HSFCA	VMS: 372.6
Purse seine (27)	IATTC	None
Harpoon (32)	States	None
Charter (250)	States	None

U.S. PACIFIC ALBACORE FISHING INFORMATION

VESSEL NAME _____ COAST GUARD DOCUMENT NO. _____ STATE MARINE BOARD NO. (e.g. WN1234AB) _____ RADIO CALL SIGN _____

VESSEL LENGTH _____ ft. CAPTAIN'S NAME _____ HOME STATE _____

DEPARTURE PORT _____ ARRIVAL PORT _____ PORT(S) LANDED _____

DEPARTURE DATE / / ARRIVAL DATE / / POUNDS LANDED _____ POUNDS TRANSSHIPPED _____

(MM/DD/YYYY) (MM/DD/YYYY)

PORT(S) SAMPLED _____

1. VOLUNTARY

2. TRANSCRIBED

DATE		GEAR CODE	FISHING CODE	LATITUDE			LONGITUDE			ALBACORE CATCH			# JIG LINES	# BAIT POLES	# HRS FISHED	# SKIFFS	SEA TEMP (°F)	SEA CONDITIONS	BYCATCH			COMMENTS <small>(No. gill net vessels in area, % gill net marked fish, amount of bait and firds in area, transshipments, dumped albacore, etc.)</small>
MONTH	DAY			DEG.	MIN	N/S	DEG.	MIN.	EW	NO. KEPT	DISCARD NO.	AVGWT (lbs)							SPECIES	NO. KEPT	DISCARD NO.	
		1 BAIT 2 JIG 3 BOTH 4 OTHER	1 IN PORT 2 TRANSIT 3 BAITING 4 FISHING														1 CALM 2 MODERATE 3 ROUGH 4 UNWORKABLE					
		1 BAIT 2 JIG 3 BOTH 4 OTHER	1 IN PORT 2 TRANSIT 3 BAITING 4 FISHING														1 CALM 2 MODERATE 3 ROUGH 4 UNWORKABLE					
		1 BAIT 2 JIG 3 BOTH 4 OTHER	1 IN PORT 2 TRANSIT 3 BAITING 4 FISHING														1 CALM 2 MODERATE 3 ROUGH 4 UNWORKABLE					
		1 BAIT 2 JIG 3 BOTH 4 OTHER	1 IN PORT 2 TRANSIT 3 BAITING 4 FISHING														1 CALM 2 MODERATE 3 ROUGH 4 UNWORKABLE					
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The National Marine Fisheries Service (NMFS) is collecting this information in support of its implementation of the Magnuson-Stevens Fishery Management and Conservation Act and the High-Seas Fishing Compliance Act (HSFCA). The information will be used by NMFS to assess the status of Pacific albacore stocks and monitor the fisheries. It will be also be used by U.S. negotiators in international and domestic forums to develop policy for the continued harvesting of Pacific albacore. Response is voluntary except for persons holding permits under the High-Seas Fishing Compliance Act, for whom it is mandatory. The information submitted will be treated confidentially in accordance with NOAA Administrative Orders. The burden for completing a logbook for a fishing trip of 30 days is estimated at 1 hour above that of logbooks kept for normal business practice. This estimate includes the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, 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.

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

[Docket No. 031125294-3294-01; I.D. 102903C]

RIN 0648-AP42

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP), which was submitted by the Pacific Fishery Management Council (Pacific Council) for review and approval by the Secretary of Commerce.

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

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

Copies of the FMP, environmental impact statement (EIS), regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) may be obtained from Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Svein Fougner, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, and by e-mail to David_Rostker@omb.eop.gov, or faxed to 202-395-7285.

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

SUPPLEMENTARY INFORMATION: The Pacific Council prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* On January 18, 2002, a notice of availability of a Draft Environmental Impact Statement for the FMP was published in the **Federal Register** (67 FR 2651). The Pacific Council held 7

public hearings on the FMP from January 28, 2002, to February 4, 2002, in the States of Washington, Oregon, and California. At its March 2002 meeting in Sacramento, CA, the Pacific Council reviewed public comments received at the hearings, considered written and oral comments, and adopted preliminary preferred alternatives for some issues, leaving its decision on other alternatives for a future meeting. At its October-November 2002 meeting in Foster City, CA, the Pacific Council adopted all of its preferred alternatives and voted to submit the FMP for Secretarial review.

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

The FMP that would be implemented by this proposed rule is intended to address concerns about the effect of fishing on highly migratory species (HMS) off the U.S. West Coast and on ocean resources caught incidentally to

fishing for HMS. The fish species included in the management unit are tuna (yellowfin, bigeye, skipjack, albacore, and northern bluefin), billfish (striped marlin and swordfish), oceanic sharks (common thresher, bigeye thresher, pelagic thresher, shortfin mako, blue), and dorado (also commonly known as mahi mahi and dolphinfish). Other species ranging throughout the Pacific Ocean throughout the Pacific are taken incidental to fishing for HMS but are not in the management unit. A significant amount of information exists on some species, such as some of the tunas, but comprehensive stock assessments are needed for many species, which are harvested by numerous coastal and distant-water fishing nations throughout the Pacific. United States fishermen fish HMS in the U.S. exclusive economic zone (U.S. EEZ), in the exclusive economic zones of other nations, and on the high seas.

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

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

Management Unit Species

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

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

Tuna

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

Sharks

Most sharks are less productive than other HMS and are vulnerable to overfishing. Although shark species included in the management unit range throughout the Pacific Ocean and are not being overfished, the FMP proposes to adopt harvest limits off the Pacific coast for common thresher of 340 metric tons (mt) and shortfin mako of 150 mt to prevent local depletion. The thresher shark harvest guideline is lower than the recommended harvest limit set in the tri-state fishery management plan for

this species developed by the States of California, Oregon, and Washington. The justification for a more conservative approach in the FMP is the result of an analysis of historical harvests explained in Chapter 3 of the FMP, which contains an estimate of a local maximum sustainable yield that is less than that contained in the tri-state plan. No harvest limit is proposed for pelagic thresher shark, bigeye thresher shark or blue shark. Public comment is sought on this approach and whether harvest limits should be placed on other species.

Other Species

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

Fishing Gear Employed

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

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

Major Issues

1. Management of Longline Fishery

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

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

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

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

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

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

2. Management of Drift Gillnet Fishing

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

program would remain in effect under State of California regulations.

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

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

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

3. Permits

This proposed rule would require all commercial vessels fishing for HMS to obtain a permit with an endorsement for the specific gear to be used. A permit would also be required for all recreational charter vessels and commercial passenger carrying fishing vessels (CPFV) fishing for HMS. Other alternatives analyzed in the FMP include a general permit without a gear specification and a permit system that includes all recreational vessels. The purpose of a permit is to identify the vessels in the HMS fisheries so that surveys can be made when management information is required and to notify all participants of potential management actions affecting the fisheries. Permits based on gear type make surveys more efficient because landing and economic information is often needed for specific gear types. Permits would be issued to the owner of a specific vessel. Data would be maintained so that landings by the permitted vessel or by the owner of the vessel can be summarized, which would give the Pacific Council

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

Permits are currently required for vessels fishing on the high seas under the authority of the High Seas Fishing Compliance Act of 1995 and for longline vessels fishing under the authority of the Pelagics FMP. In compliance with United States obligations under the Tuna Conventions Act of 1950, NMFS is also providing information to the Inter-American Tropical Tuna Commission (IATTC) for an international vessel register including all U.S. vessels that fish tuna in the eastern Pacific Ocean. Thus, a list of vessels that would likely fall under the jurisdiction of the FMP has been completed by the Southwest Region, NMFS. The regulations propose issuing HMS permits to all individuals on this list. There would be no qualification requirements for a permit. Vessel owners who have not received a permit to harvest HMS by 60 days following the effective date of the final regulations would have to apply for an HMS permit. All vessels would need an HMS permit by January 1, 2005. There would be no cost to fishermen for this permit.

4. Recording and Recordkeeping

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

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

5. Bycatch

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

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

6. Management Organizations

There is no single, pan-Pacific institution that manages all HMS throughout their ranges. The IATTC adopts conservation measures for yellowfin and bigeye tunas in the eastern Pacific Ocean. Member nations of the IATTC, including the United States, are obligated to implement IATTC conservation measures for their national fisheries. On September 5, 2000, the Convention on Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean was opened for signature by the coastal nations of the western

and central Pacific and nations fishing in that region. The Convention has not yet entered into force and has not been ratified by the United States, but it would establish a commission empowered to adopt management measures for HMS throughout their ranges in the central and western Pacific. The IATTC and the new western Pacific commission may play important roles in managing West Coast-based HMS fisheries.

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

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

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

7. Protected Species and the Framework Process

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

Section 118(f)(9) of the MMPA authorizes the Assistant Administrator for Fisheries (AA) to promulgate regulations governing commercial fishing operations to implement a take reduction plan to protect or restore a marine mammal stock or species. Likewise, vessels fishing for highly migratory species may have an impact on threatened or endangered species, which could require action by the Assistant Administrator under the authority of the ESA. The Pacific Offshore Cetacean Take Reduction Team established under the MMPA reviews fishery and observer data and provides guidance to NMFS on actions needed to protect marine mammals. The Southwest Regional Administrator will provide these reports to the Pacific Council for recommendations on whether and how best to implement any necessary measures. If appropriate, the Pacific Council will utilize the

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

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

Classification

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

The Pacific Council prepared the FMP in the format of a final environmental impact statement (FEIS) consistent with the National Environmental Protection Act (NEPA). NOAA expects to file the FEIS with the Environmental Protection Agency after Secretarial review of the FMP has begun but before final action to approve, disapprove, or disapprove in part the FMP. The FMP contains a framework management process that facilitates timely implementation of management measures by the Pacific Council without amending the FMP. This will allow the Pacific Council and NMFS to act quickly to address resource conservation issues. Maximum sustainable yield is established for all managed species to ensure compliance with the Magnuson-Stevens Act, although some species are also managed by international organizations and come within the jurisdiction of other fishery management councils. Consistency of management to ensure effective conservation and management is a goal of the FMP. Harvest limits are established for common thresher and mako shark to prevent local depletion. Although highly migratory, evidence indicates that local depletion of these sharks can occur and would have an impact on these species and the fisheries involved. To protect endangered turtles and protected seabirds, the FMP makes regulations governing longline fishing from West Coast ports consistent with the rules established for longline vessels fishing out of Hawaii, when West Coast vessels are fishing west of 150° W. long.; therefore, all U.S. fishermen must

adhere to the same conservation measures in these waters regardless of jurisdiction. However, in waters east of 150° W. long., West Coast longline vessels would not be subject to the same limitation as western Pacific vessels. The impacts of this approach, both with respect to implications for effective management and with respect to ESA issues, will be fully evaluated through the review of the FMP and the section 7 consultations described above. Rules governing drift gillnet fishing issued under the authority of the ESA are incorporated in the FMP. Incorporating rules in the FMP issued under other authorities will ensure wider public review of management issues and broader analysis. Permit and reporting requirements of the FMP build on existing programs to obtain sufficient information needed for management while minimizing duplication.

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

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

A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of \$3.5 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$5.0 million.

Fishing vessels targeting HMS are expected to be the only types of small entities directly impacted by the proposed actions. Any regulatory action under the FMP that would result in a reduction in domestic landings of HMS are expected to be offset at the processor level by imports at comparative prices. None of the initial regulatory alternatives considered are expected to add to the costs or reduce revenues of marinas and charter/party boats. Only the permit and logbook requirements described below would add additional reporting.

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

The FMP proposes management of 5 commercial fishing fleets and a fleet of recreational charter vessels. Each fleet has its own gear requirements, each has a differential impact on ocean resources, and each has different economic

circumstances. The FMP authorizes commercial legal HMS gear as harpoon, surface hook and line, drift gillnet of at least 14-inch (35.56-cm) stretched mesh or greater, purse seine, and pelagic longline. The FMP authorizes rod and reel, spear, and hook and line as recreational gear. An alternative for drift gillnet gear was to allow stretched mesh less than 14 inches (35.56 cm).

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

For drift gillnet vessels using nets with 14-inch (35.56-cm) or greater stretched mesh, the FMP adopts all Federal conservation and management measures in place under the MMPA and ESA; adopts all state regulations for drift gillnet fishing under Magnuson-Stevens Act authority, except the states' limited entry programs, which will remain under state authority; modifies an Oregon closure inside 1000 fathoms to be in effect year round; closes U.S. EEZ waters off Washington to all drift gillnet vessels; and includes provisions (as in current ESA regulations) to establish a turtle protection closure north of Point

Sur, CA to 45° N. lat. from August 15 to November 15, and south of Pt. Conception, CA to 120° W. long. during a forecasted or occurring El Nino event in the months of June, July, and August. Existing Federal and state regulations, including current state drift gillnet time-area closures and gear restrictions were deemed appropriate for adopting. However, the Pacific Council concluded that incorporating under MSA authority the existing state limited entry programs would significantly increase Federal costs and administrative burdens and was premature. The Pacific Council may consider limited entry under the FMP in

the future and has already asked its plan team to begin consideration of limited entry for the West Coast longline fishery. Closures off Washington and Oregon are intended to protect the common thresher shark, sea turtles and marine mammals. This alternative modifies the current state regulations to prohibit, year round, drift gillnet fishing for swordfish and sharks in U.S. EEZ waters off Oregon east of a line approximating the 1,000 fm curve (deleting an existing May-August prohibition within 75 nautical miles) and prohibits drift gillnet fishing in all U.S. EEZ waters off Washington. The

State of Washington currently does not allow the use of drift gillnet gear and Oregon does not allow drift gillnets to target thresher shark, although drift gillnet vessels have fished off both states and landed their catch in California.

Approximately 64 vessels actively participate in the drift gillnet fishery off the U.S. West Coast (see table below). All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no disproportionate financial impacts between small and large vessels under the proposed action.

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

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

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

species and will use alternative gears, no attempt was made to evaluate potential changes in fishing strategies by these vessels in response to different opportunities to harvest HMS under each of the regulatory alternatives, and what this would mean in terms of operating costs and ex-vessel revenues under alternative fishing strategies.

Financial impacts of each drift gillnet regulatory alternative were evaluated based on incremental changes from the status quo; i.e., the difference between drift gillnet ex-vessel private profits under the proposed action and drift gillnet private profits under the status quo. The following table reports the estimated incremental changes in short-run financial profits for drift gillnet vessels for each regulatory alternative relative to the status quo. Financial impacts are evaluated as the present value of changes in short-run financial profits over a 25 year time period discounted at 7 percent and 4 percent discount rates. In column two, the present value of the change in average annual short-run financial profit from the status quo (from column three) is calculated for a 25-year time horizon at 7 percent and 4 percent discount rates. Column three reports the difference in

estimated average annual short-run financial profit the difference between average annual exvessel revenue and average annual variable costs - under the alternative being considered and the average annual short-run financial profit under the status quo alternative. The discount rate is the rate of interest at which the cash flows associated with the proposed policy are to be discounted. The choice of discount rate reflects social time preference and the opportunity cost of resources that are used under the policy. Social time preference tends to discount the future less heavily than private time preference, while opportunity cost considerations tend to weigh against using lower discount rates for public policies for fear of preempting higher valued private use of the appropriated resources.

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

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

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

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25-Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Drift Gillnet Alternative 1: Continues the swordfish/shark DGN fishery regulations under current state and Federal authorities. (Status quo/No action)	NC	NC
Drift Gillnet Alternative 2: Differs from status quo with the imposition, on all DGN fishers, of a year round Oregon closure inside 1000 fm (or way point equivalent), elimination of the May-August closure inside 75 miles off Oregon, and the closure of U.S. EEZ waters off Washington. (Proposed Action)	NA	-\$56,769
7-percent Discount Rate	-\$661,557	NA
4-percent Discount Rate	-\$886,843	NA
Drift Gillnet Alternative 3: Endorses or adopts only existing Federal (MMPA, ESA) DGN regulations into FMP; defers to state regulations; no difference from status quo.	NA	NC
7-percent Discount Rate	NC	NA
4-percent Discount Rate	NC	NA
Drift Gillnet Alternative 4: Endorses or adopts all Federal conservation and management measures in place under the MMPA and ESA, and adopts state regulations under MSFCMA authority, but also includes and federalizes the states' limited entry programs; differs from status quo by the impact of federalizing states' limited entry programs.	NA	UN
7-percent Discount Rate	UN	NA
4-percent Discount Rate	UN	NA
Drift Gillnet Alternative 5: Adopts turtle time/area closures per Biological Opinion, including larger area closure north of Point Conception; differs from status quo by the impact of enlarging the closed area.	NA	-\$247,764
7-percent Discount Rate	-\$2,887,333	NA
4-percent Discount Rate	-\$9,052,347	NA
Drift Gillnet Alternative 6: Prohibits the use of drift gillnets to take swordfish and sharks in any U.S. EEZ waters less than 1000 fm off Oregon and Washington; differs from status quo by the impact of closing this area. ²	NA	\$310
7-percent Discount Rate	\$3,617	NA
4-percent Discount Rate	\$4,848	NA
Drift Gillnet Alternative 7: Drift gillnets could not be used to take swordfish and sharks in any U.S. EEZ waters north of 45° N latitude year round, including times when the northern turtle closure is not in effect (Nov 16 to Aug 14); differs from status quo by the impact of closing this area.	NA	-\$8,612
7-percent Discount Rate	-\$100,365	NA
4-percent Discount Rate	-\$134,544	NA
Drift Gillnet Alternative 8: Drift gillnetting would be prohibited inside 75 nm off Oregon from May 1 to August 14 and inside the 1,000 fm curve the rest of the year, and U.S. EEZ waters off Washington would be closed year round to all, including Oregon- and California-based DGN fishers; differs from the status quo by the impact of the closures off Oregon and Washington to all fishers.	NA	-\$56,769
7-percent Discount Rate	-\$661,557	NA
4-percent Discount Rate	-\$886,843	NA

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

3 active fishermen operating in these areas and covered 2 years of fishing for both respondents.)

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

The FMP establishes a prohibition on the use of pelagic longline gear in the U.S. EEZ. The proposed action continues the *de facto* longline prohibition throughout the U.S. EEZ

and minimizes potential bycatch of fish and protected species, and reduces fishery competition problems. There are no vessels currently participating in a pelagic longline fishery within the U.S. EEZ off the U.S. West Coast. Although Oregon is the only state that allows pelagic longlining within the U.S. EEZ on a case by case basis, no landings have occurred. All of the Oregon vessels would be considered small businesses under the SBA standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

Financial impacts of each pelagic longline regulatory alternative within the U.S. EEZ were evaluated based on

incremental changes from the status quo; i.e., the difference between pelagic longline ex-vessel private profits under the proposed action and pelagic longline private profits under the status quo. Because there are no empirical

financial data available for this fishery, comparisons are based on the application of economic theory to potential fishing opportunities arising from the regulatory alternatives. The following table reports the estimated

incremental qualitative changes in short-run financial profits for vessels for each regulatory alternative relative to the status quo. The annual average change in short-run financial profits is also shown.

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

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

adverse impact on bycatch and protected species interactions.

Beyond the U.S. EEZ, the FMP applies to West Coast-based longline vessels all of the restrictions applied to Hawaii-based longline vessels when fishing west of 150° W. long., but applies selected restrictions to vessels fishing east of 150° W. long., which allows West Coast-based vessels to target swordfish east of 150° W. long. (except for a partial closure in April and May). Restrictions limit sea turtle and seabird interactions and improve monitoring of the fishery. Swordfish targeting would be allowed east of 150° W. long. for most of the year under the FMP, though the ESA section 7 consultations may result in a finding of jeopardy to one or more species listed

under the ESA and alternative management measures may be necessary. The objectives of the proposed action provide for a longline fishing opportunity, giving due consideration to traditional participants in the fisheries, while providing adequate protection to sea turtles and seabirds.

A total of 38 vessels participated in the West Coast-based, high seas pelagic longline fishery during 2001 (see table below). All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action.

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

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

Financial impacts of each high seas pelagic longline regulatory alternative were evaluated based on incremental changes from the status quo; i.e., the difference between pelagic longline ex-vessel private profits under the proposed action and pelagic longline private profits under Alternative 1, the status quo. The following table reports the estimated incremental changes in short-run financial profits for pelagic longline vessels for each regulatory alternative relative to the status quo. Financial impacts are evaluated as the present value of changes in short-run financial profits projected over a 25 year time period, discounted at 7 percent and 4 percent discount rates. The annual average change in short-run financial profits is also shown. The changes in financial profit were estimated using cost and earnings data voluntarily provided by industry members. Owners of 6 vessels provided 2 years of data each; this was about 25 percent of the active fleet in that period.

Under the status quo, the FMP would not impose regulations on the high seas, West Coast-based pelagic longline fishery. Fishing could continue without regulations until regulations are established under other authorities. Therefore, without the FMP, the future

of the West Coast-based pelagic longline fishery operating on the high seas is expected to be different from recent conditions. Swordfish is the target species of this fishery, and swordfish sets may be prohibited; gear restrictions (no light sticks, minimum depth of sets, line clippers to release sea turtles) would apply; and seabird avoidance methods would be required. Longline fishing targeting tuna on the high seas out of West Coast ports might then be an alternative if swordfish targeting is prohibited, but current participants in the fishery indicate that without being able to target swordfish, the high seas longline fishery originating from West Coast ports would cease to exist. In view of this likelihood, the estimated financial impacts relative to Alternative 1 assume that regulations are likely in the future that would prohibit West Coast-based pelagic longliners from targeting swordfish on the high seas, and that under those circumstances the fishery would cease to exist.

Alternative 2 would allow the fishery to continue under selected restrictions, and the financial impact of Alternative 2, shown below, is based on a projection of current private profits in the fishery. Estimates of current private profits do not include the private costs that might

be incurred in adopting turtle and seabird saving measures, placement of observers, and the installation and use of VMS, and any lost revenues from being unable to fish from 15° N. lat. to the equator, and from 145° W. long. to 180° W. long. during April and May. Therefore, private profits under Alternative 2 in the table below may be overstated. While some West Coast-based, high seas pelagic longliners harvest species other than swordfish, no attempt was made to evaluate potential changes in fishing strategies by these vessels in response to different harvest opportunities under each of the regulatory alternatives, and what this would mean in terms of operating costs and ex-vessel revenues under alternative fishing strategies. Alternative 2 was chosen because the Pacific Council concluded that it could not propose elimination of such a valuable fishery without clear indication that the takes of sea turtles would be excessive.

Alternative 3 would prohibit swordfish targeting with implementation of the FMP. Under Alternative 3 the assumption is that the fishery would disappear in the long run, in which case there is no difference from the status quo.

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

Alternative 2 would maintain the fishery, but impose some slight additional costs on West Coast-based longliners targeting swordfish on the high seas. Fishermen would have to incur some of the cost of adopting turtle and seabird saving measures, accommodating observers and using monitoring equipment such as a vessel monitoring system. Therefore, under Alternative 2 there would be a slight reduction in annual short-run, financial

profits from those reported above. There may also be reductions in swordfish catch rates due to the alternative of turtle and seabird mitigation measures. This could further reduce short-run, financial profits. If subsequent analyses prove that swordfish longlining on the fishing grounds of the West Coast-based, high seas pelagic longline fleet results in less impact on turtles and other protected species (or that these interactions can be avoided), its further

development could lead to increased short run financial profits. If on the other hand, subsequent analyses prove that swordfish longlining in the fishing grounds in the eastern north Pacific action area has potential for the same or greater impact on protected species, the fishery may not be able to continue operating unless ways to prevent jeopardy to protected species can be developed. In the latter case there are likely to be additional harvesting costs

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

The fishery will probably be subject to regulations promulgated under other authorities, which are expected to result in its disappearance in time. This is reflected in the long-term status quo, Alternative 1, where financial profits become zero with a phase out of the fishery. In the near term however, the fishery may persist under existing state regulations, in which case short-run financial profits are expected to be \$6.8 million per year under the status quo. These are the same as the annual average financial profits that would be expected under Alternative 2 minus the cost of adopting turtle and seabird

saving measures, accommodating observers and using monitoring equipment such as vessel monitoring systems. Short and long-term profits would disappear under Alternative 3 with the prohibition on targeting swordfish. Therefore, in the long term, Alternative 3 is the same as the status quo.

The FMP opens the entire U.S. EEZ to purse seine fishing, although there has been little interest in such fishing for highly migratory species off Oregon and Washington. The objectives of the proposed action are to provide for additional purse seine fishing opportunities. There were 27 vessels on average participating in the West Coast-based, coastal purse seine fishery during the 1995–99 period. All of these vessels would be considered small businesses

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

Financial impacts of each purse seine regulatory alternative were evaluated based on incremental changes from the status quo; i.e., the difference between expected purse seine ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for pelagic longline vessels for each regulatory alternative relative to the status quo. There are no cost and earnings data available for purse seine fishing for highly migratory species off Oregon and Washington.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25-Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Purse Seine Alternative 1: State area closures would remain in effect under states' authorities. (Status Quo/No Action)	NC	NC
Purse Seine Alternative 2: Opens the entire U.S. EEZ to purse seine fishing. (Proposed Action)	NQ+	NQ+
Purse Seine Alternative 3: Closes the area within the U.S. EEZ north of 45° N latitude to purse seine fishing to address bycatch and protected species concerns, and possible adverse impacts on other fisheries.	NQ+	NQ+
Purse Seine Alternative 4: Closes the U.S. EEZ off Washington to purse seine fishing, but allows it off Oregon and California.	NQ+	NQ+

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

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

this opportunity might extend to California-based purse seiners.

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

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

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

Financial impacts of each regulatory alternative pertaining to the sale of striped marlin were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25-Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Marlin Sales Alternative 1: The sale of striped marlin would not be prohibited by Federal regulation in this FMP, but would continue to be prohibited by the State of California. (Status Quo/No Action)	NC	NC
Marlin Sales Alternative 2: Prohibits the sale of striped marlin by vessels under PFMC jurisdiction. (Proposed Action)	NC	NC

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

The FMP would require a Federal permit with a specific endorsement for each gear type (harpoon, drift gillnet, surface hook and line, purse seine, and pelagic longline). The permits and endorsements are subject to sanctions, including revocation, as provided by Section 308 (g) of the Magnuson-Stevens Act. Permits are a standard tool used to support management by facilitating collection of biological, economic or

social data, facilitating enforcement of laws and regulations, identifying those who would be affected by actions to prevent or reduce excess capacity in the fishery, and providing information to meet international obligations.

A review of NMFS data bases indicates that there are an estimated 1,337 vessels likely to harvest highly migratory species. All vessels would be considered small businesses under the SBA standards. Therefore, there would be no disproportionate financial impacts between small and large vessels under the proposed action. The proposed action is duplicative in the sense that permit requirements implemented for

other purposes (e.g., HSFCA) may require a vessel to have more than one permit to fish highly migratory species.

Financial impacts of each regulatory alternative pertaining to commercial fishing permits were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo. The annual average change in short-run financial profits is also shown.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25-Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Commercial Permit Alternative 1: Require no new Federal permits. Federal permits under other laws would remain in place, as would state permit requirements. (Status Quo/No Action)	NC	NC
Commercial Permit Alternative 2: Requires a Federal permit for HMS vessels with a specific endorsement for each gear type (harpoon, DGN, surface hook and line, purse seine, and pelagic longline). The permit is to be issued to a vessel owner for each specific fishing vessel used in commercial HMS fishing. (Proposed Action)	NQ-	NQ-
Commercial Permit Alternative 3: Requires a Federal permit for all vessels engaged in commercial HMS fisheries within and outside the U.S. EEZ. One permit would cover all HMS fisheries for a given vessel.	NQ-	NQ-
Commercial Permit Alternative 4: Requires a Federal permit for all vessels engaged in selected commercial fisheries. Initial candidates for permits would be vessels engaged in DGN and longline fisheries.	NQ-	NQ-

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

The FMP requires a Federal permit for all charter or commercial passenger carrying fishing vessels (CPFV) from which recreational fishers pursue highly

migratory species, but an existing state permit or license for recreational vessels could meet this requirement. As with commercial fishing permits, this measure would provide a mechanism for identifying the scope of the recreational fishery and the participants so that data collection and research could be more focused and effective. There are approximately 300 charter and CPFV vessels on the West Coast. All these vessels would be considered small businesses under the SBA standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action. The proposed action would not require new reporting, record-keeping, or other

compliance requirements. However, permit processing and periodic permit renewal would be necessary under state laws and regulations.

Financial impacts of each regulatory alternative pertaining to recreational fishing permits were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo. The annual average change in short-run financial profits is also shown.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25-Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Recreational Permit Alternative 1 Requires no new Federal permits for recreational vessels, private or party/charter. (Status Quo/No Action)	NC	NC
Recreational Permit Alternative 2: Requires a Federal permit for all CPFVs that fish for HMS, but an existing state permit or license for recreational vessels could meet this requirement. The Pacific Council would, however, request states to incorporate in their existing CPFV permit systems an allowance for an HMS species endorsement on permits, so that statistics could be gathered on that segment of the HMS fishery. (Proposed Action)	NQ-	NQ-
Recreational Permit Alternative 3: Requires a separate Federal permit for all CPFVs that fish for HMS; a state permit could not be used to fill this requirement, as in Alternative 2.	NQ-	NQ-
Recreational Permit Alternative 4: Requires a Federal permit for all recreational fishing vessels (private, party and charter/CPFV) that fish for HMS within and outside the U.S. EEZ.	NQ-	NQ-

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

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

would satisfy this requirement. The proposed action would impose new reporting and record-keeping requirements for some vessels. The proposed action is designed to avoid duplication of existing Federal reporting requirements. Financial impacts of each regulatory alternative pertaining to fishing vessel reporting requirements were evaluated based on incremental changes from the status quo; i.e., the difference between expected ex-vessel private profits under the proposed action and private profits under the status quo. The following table reports the estimated incremental qualitative changes in short-run financial profits for each regulatory alternative relative to the status quo. The annual average change in short-run financial profits is also shown.

Alternative	Change in the Present Value of Short-Run Financial Profits Relative to the Status Quo (25-Year Time Horizon)	Average Annual Change in Short-Run Financial Profits Relative to the Status Quo
Reporting Requirements Alternative 1: There would be no new Federal requirements for reporting, including Federal provisions for filling out Far Offshore Fishing Declarations. Existing Federal reporting requirements (e.g., HSFCA reports for fishing on the high seas) and state reporting requirements would apply. (Status Quo/No Action)	NC	NC
Reporting Requirements Alternative 2: Requires all commercial and recreational party or charter/CPFV fishing vessels to maintain and submit logbooks to NMFS. State or existing Federal logbooks could meet this requirement as long as essential data elements are present, and data are available to NMFS subject to a data exchange agreement. (Proposed Action)	NQ-	NQ-
Reporting Requirements Alternative 3 Limits new Federal reporting requirements to those commercial vessels that are not already required to report under existing Federal laws.	NQ-	NQ-

Under Alternative 2 there would be a slight reduction in financial profits due to the cost of satisfying the proposed reporting requirements for logbooks for those vessels that do not already meet these requirements. There are also additional reporting requirements associated with the use of vessel

monitoring systems and vessel markings. Vessel monitoring systems would be required of longline vessels, but there are not expected to be any costs to vessels under this requirement. All vessels would be required to have identifying numbers, which would impose some additional fixed costs, and

although minor, may be disproportionate across smaller vessels engaged in fisheries for highly migratory species. Under Alternative 3, financial impacts would be less because many vessels already maintain logbooks under existing Federal laws.

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

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

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

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

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

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

List of Subjects

50 CFR Part 223

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

50 CFR Part 224

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

50 CFR Part 660

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

Dated: December 3, 2003.

William T. Hogarth,

Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223, 50 CFR part 224, and 50 CFR part 660 are proposed to be amended as follows:

50 CFR Chapter VI

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

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

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

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

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

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

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

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

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

* * * * *

(c) Special prohibitions relating to leatherback sea turtles are provided at § 223.206(d)(2)(iv) and § 660.713.

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

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

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

6. Add subpart K to read as follows:

Subpart K—Highly Migratory Fisheries

Sec.

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

Subpart K—Highly Migratory Fisheries

§ 660.701 Purpose and scope.

This subpart implements the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP). These regulations govern commercial and recreational vessels based on the West Coast and fishing for HMS seaward of the coasts of Washington, Oregon, and California.

§ 660.702 Definitions.

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

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

Commercial fishing means (1) Fishing by a person who possesses a commercial

fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, landing and/or sale; or

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

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

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

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

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

(4) *Purse seine*. An encircling net that may be closed by a purse line threaded through the bottom of the net. Purse seine gear includes ring net, drum purse seine, and lampara nets.

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

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

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

Fishing year is the year beginning at 0801 GMT (0001 local time) on April 1 and ending at 0800 GMT on March 31 (2400 local time on September 30) of the following year.

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

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

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

Billfish/Swordfish:

striped marlin (*Tetrapturus audax*)
swordfish (*Xiphias gladius*)

Sharks:

common thresher shark (*Alopias vulpinus*)
pelagic thresher shark (*Alopias pelagicus*)
bigeye thresher shark (*Alopias superciliosus*)
shortfin mako or bonito shark (*Isurus oxyrinchus*)
blue shark (*Prionace glauca*)

Tunas:

north Pacific albacore (*Thunnus alalunga*)
yellowfin tuna (*Thunnus albacares*)
bigeye tuna (*Thunnus obesus*)
skipjack tuna (*Katsuwonus pelamis*)
northern bluefin tuna (*Thunnus orientalis*)

Other:

dorado or dolphinfish (*Coryphaena hippurus*)

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

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

Highly Migratory Species Management Team (HMSMT) means the individuals appointed by the Council to review, analyze, and develop management measures for highly migratory species fisheries.

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

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

Mesh size means the opening between opposing knots in a net. Minimum mesh size means the smallest distance allowed between the inside of one knot

to the inside of the opposing knot when the mesh is stretched, regardless of twine size.

Offloading means removing HMS from a vessel.

Permit holder means a permit owner.

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

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

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

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

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

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

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

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

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

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

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

Vessel monitoring system unit (VMS unit) means the hardware and software

equipment owned by NMFS, installed on vessels by NMFS, and required by § 660.712(d) to track and transmit the positions of fishing vessels.

§ 660.703 Management area.

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

§ 660.704 Vessel identification.

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

(b) *Numerals.* The official number must be affixed to each vessel subject to this subpart in block Arabic numerals at least 14 inches (35.56 cm) in height. Markings must be legible and of a color that contrasts with the background.

§ 660.705 Prohibitions.

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

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

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

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

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

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

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

(g) Fish for HMS in violation of any terms or conditions attached to an exempted fishing permit issued under § 600.745 of this chapter or by § 660.718.

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

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

(j) Falsify or fail to make and/or file any and all reports of fishing, landing, or any other activity involving HMS,

containing all data, and in the exact manner, required by the applicable state law, as specified in § 660.708(b).

(k) Fail to carry aboard a vessel that vessel's permit issued under § 660.707 or exempted fishing permit issued under § 660.718.

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

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

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

(o) Fish for, catch, or harvest HMS with longline gear without a VMS unit on board the vessel after installation of the VMS unit by NMFS.

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

(q) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear deployed west of 150° W. long. and north of the equator (0° lat.) on a vessel registered for use of longline gear in violation of § 660.712(a)(2).

(r) Possess a light stick on board a longline vessel when fishing west of 150° W. long. and north of the equator (0° lat.) in violation of § 660.712(a)(7)

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

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

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

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

(w) Fish for HMS (including transshipping HMS) with a vessel registered for use with longline gear within closed areas or by use of unapproved gear configurations in violation of § 660.712(a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(8), or (a)(9).

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

violation of § 660.712 (c)(1)(i) and (c)(1)(ii).

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

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

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

(bb) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.712(c)(8).

(cc) Fail to handle seabirds other than short-tailed albatross that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival in violation of § 660.712(c)(9).

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

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

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

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

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

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

§ 660.706 Pacific Coast Treaty Indian rights.

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

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

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

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary of Commerce, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the NMFS Northwest Regional Administrator, at least 120 days prior to the time the allocation is desired to be effective, and will be subject to public review through the Council process. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

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

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

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

(h) Fishing by a member of a Pacific Coast treaty Indian tribe outside that

tribe's usual and accustomed fishing area, or for a species of HMS not covered by a treaty allocation or applicable Federal regulation, is subject to the HMS regulations applicable to non-treaty fisheries.

§ 660.707 Permits.

(a) *General.* This section applies to fishing for HMS off, or landing HMS in, the States of California, Oregon, and Washington.

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

- (i) To engage in commercial fishing for HMS in the U.S. EEZ off the States of California, Oregon, and Washington;
- (ii) To carry passengers for hire on a trip to engage in recreational fishing; or
- (iii) To land or transship HMS shoreward of the outer boundary of the U.S. EEZ off the States of California, Oregon, and Washington.

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

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

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

(5) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) an HMS permit with an endorsement for use of gear for commercial fishing.

(b) *Application.* (1) Following publication of the final rule implementing the FMP, NMFS will issue permits to the owners of those vessels on a list of vessels obtained from owners previously applying for a permit under the authority of the High Seas Fishing Compliance Act (HSFCA), the Tuna Conventions Act of 1950, and § 660.21(a) of this part.

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

(3) Beginning on [date 60 days following effective date of final rule], any vessel owner who has not received an HMS permit but who wishes to have such a permit may apply to the SFD for a permit to fish for HMS off the coasts of California, Oregon, and Washington

by obtaining a Southwest Region Federal Fisheries application form from the SFD and submitting a completed application. A completed application is one that contains all the necessary information and signatures required. A copy of the application may be obtained at <http://swr.nmfs.noaa.gov/permits.htm>.

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

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

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

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

(c) *Display.* A permit issued under this subpart is required to land HMS in any port of California, Oregon and Washington. Any permit issued under this subpart, or a facsimile of the permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing HMS taken when fishing under the permit. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

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

§ 660.708 Reporting and recordkeeping.

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

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

- (i) The logbook required under § 300.21 implementing the Tuna Conventions Act of 1950;
- (ii) The logbook required under § 660.14 implementing the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region;
- (iii) The logbook required by § 300.17 implementing the High Seas Fishing Compliance Act of 1995.

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

(2) Any holder of a permit who does not maintain and submit a logbook for a fishing trip under any of the above authorities must obtain a copy of the appropriate logbook from the SFD and maintain and submit the form provided by SFD.

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

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

§ 660.709 Annual specifications.

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

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

(3) In November each year, the Council will take final action to propose any necessary harvest guidelines, quotas, or other management measures and make its recommendations to NMFS. The proposal shall include description of the purpose of the specifications and analyze the impacts of implementing such specifications.

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

(b) Fishing seasons for all species will begin on April 1 of each year at 0001

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

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

(d) Irrespective of the normal review process, the Council may recommend management action to conserve and manage the fisheries at any time. The Council may adopt a management cycle different from the one described in this section provided that such change is made by a majority vote of the Council and a 6-month notice of the change is given. To the extent such recommendations are found necessary and reasonable, NMFS will implement them through rulemaking.

§ 660.710 Closure of directed fishery.

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

(b) When a harvest guideline has been taken, the Regional Administrator will initiate review of the species of concern according to section 8.4.8 of the FMP and publish in the **Federal Register** any necessary and appropriate regulations following Council recommendations.

§ 660.711 General catch restrictions.

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

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

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

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

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

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

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

(d) *Sea turtle handling and resuscitation.* All sea turtles taken incidentally in fishing operations by any HMS vessel must be handled in accordance with 50 CFR part 223.206(d)(1).

§ 660.712 Longline fishery.

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

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

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

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

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

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

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

(b) *Sea turtle take mitigation measures.* (1) Owners and operators of vessels registered for use of longline gear must carry aboard their vessels line clippers meeting the minimum design standards specified in (b)(2) of this section, dip nets meeting minimum standards specified in (b)(3) of this section, and wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in (b)(4) through (b)(6) of this section.

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

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

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

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

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

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

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

(ii) The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches x 3 inches (7.62 cm x 7.62 cm).

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

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

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

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

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

(5) If the sea turtle brought aboard appears dead or comatose, the sea turtle must be placed on its belly (on the bottom shell or plastron) so that the turtle is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. A reflex test, performed by gently touching the eye and pinching the tail of a sea turtle, must be administered by a vessel operator, at least every 3 hours, to determine if the sea turtle is responsive. Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance may be placed

into a container holding water. A water-soaked towel placed over the eyes, carapace, and flippers is the most effective method to keep a turtle moist. Those that revive and become active must be returned to the sea in the manner described in paragraph (b)(6) of this section. Sea turtles that fail to revive within the 24-hour period must also be returned to the sea in the manner described in paragraph (b)(6)(i) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Remove any entangled lines from the bird;

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

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

(B) If alive, handle the bird in accordance with paragraphs (c)(8)(iv)(C) through (J) of this section.

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

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

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

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

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

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

(2) Able to breathe without noise;

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

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

(5) Feathers are dry.

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

(I) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS immediately upon the vessel's return to port. Do not give the bird food or water.

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

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

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

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

(iii) Remove any entangled lines from the seabird;

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

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

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

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

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

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

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

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

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

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

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

(5) The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

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

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

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

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

§ 660.713 Drift gillnet fishery.

(a) *Take reduction plan gear restrictions.* Gear restrictions implementing the Pacific Offshore Cetacean Take Reduction Plan under the authority of the Marine Mammal Protection Act of 1972 remain in effect and can be found at 50 CFR 229.31.

(b) *Other gear restrictions.* (1) The maximum length of a drift gillnet on board a vessel shall not exceed 6,000 ft (1,828.8 m).

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

(c) *Protected Resource Area Closures.* (1) No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean from August 15 through November 15 in the area bounded by straight lines connecting the following coordinates in the order listed (see figure 3 of this section):

(i) Pt. Sur at 36° 18.5' N. lat.;

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

(iii) 34° 27' N. lat. 129° W. long.;
 (iv) 45° N. lat. 129° W. long.; and
 (v) the point where 45° N. lat.
 intersects the Oregon coast.

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

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

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

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

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

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

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

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

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

(6) In the portion of the U.S. EEZ within the area bounded by a line from the lighthouse at Point Reyes, California to Noonday Rock, to Southeast Farallon Island to Pillar Point.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) *San Clemente Island closure.* In the portion of the U.S. EEZ within 6 nautical miles of the coastline on the easterly side of San Clemente Island within a line extending 6 nautical miles

west from 33° 02' 16" N. lat., 118° 35' 27" W. long. and a line extending 6 nautical miles east from the light at Pyramid Head.

§ 660.714 Purse seine. [Reserved]

§ 660.715 Harpoon. [Reserved]

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

§ 660.717 Framework for revising regulations.

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

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

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

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

§ 660.718 Exempted fishing.

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

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

§ 660.719 Scientific observers.

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

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

(c) NMFS shall advise the permit holder or the designated agent of any observer requirement at least 24 hours (not including weekends and Federal holidays) before any trip.

(d) When NMFS notifies the permit holder or designated agent of the obligation to carry an observer in response to a notification under this subpart or as a condition of an EFP issued under 50 CFR 660.718, the vessel may not engage in the fishery without taking the observer.

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

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

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

(2) Allowing the observer access to all areas of the vessel

necessary to conduct observer duties.

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

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

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

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

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

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

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 112103E]

RIN 0648-AR66

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

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

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

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

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

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

Copies of Amendment 21, which includes an environmental assessment (EA), a supplemental regulatory impact review (RIR) and initial regulatory flexibility analysis (IRFA), and a copy of a minority report filed by three Council members opposing provisions in the amendment that allow seasonal surface trolling within the reserves, may be obtained from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S.

Highway 301 North, Suite 1000, Tampa, FL 33619-2266; phone: 813-228-2815; fax: 813-833-1844; e-mail: gulf.council@noaa.gov.

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

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

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

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

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.

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(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.

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(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.