

- (139) 42°13.67' N. lat., 124°35.81' W. long.;
- (140) 42°05.66' N. lat., 124°34.92' W. long.;
- (141) 42°00.00' N. lat., 124°35.27' W. long.;
- (142) 41°47.04' N. lat., 124°27.64' W. long.;
- (143) 41°32.92' N. lat., 124°28.79' W. long.;
- (144) 41°24.17' N. lat., 124°28.46' W. long.;
- (145) 41°10.12' N. lat., 124°20.50' W. long.;
- (146) 40°51.41' N. lat., 124°24.38' W. long.;
- (147) 40°43.71' N. lat., 124°29.89' W. long.;
- (148) 40°40.14' N. lat., 124°30.90' W. long.;
- (149) 40°37.35' N. lat., 124°29.05' W. long.;
- (150) 40°34.76' N. lat., 124°29.82' W. long.;
- (151) 40°36.78' N. lat., 124°37.06' W. long.;
- (152) 40°32.44' N. lat., 124°39.58' W. long.;
- (153) 40°30.00' N. lat., 124°38.13' W. long.;
- (154) 40°24.82' N. lat., 124°35.12' W. long.;
- (155) 40°23.30' N. lat., 124°31.60' W. long.;
- (156) 40°23.52' N. lat., 124°28.78' W. long.;
- (157) 40°22.43' N. lat., 124°25.00' W. long.;
- (158) 40°21.72' N. lat., 124°24.94' W. long.;
- (159) 40°21.87' N. lat., 124°27.96' W. long.;
- (160) 40°21.40' N. lat., 124°28.74' W. long.;
- (161) 40°19.68' N. lat., 124°28.49' W. long.;
- (162) 40°17.73' N. lat., 124°25.43' W. long.;
- (163) 40°18.37' N. lat., 124°23.35' W. long.;
- (164) 40°15.75' N. lat., 124°26.05' W. long.;
- (165) 40°16.75' N. lat., 124°33.71' W. long.;
- (166) 40°16.29' N. lat., 124°34.36' W. long.; and
- (167) 40°10.00' N. lat., 124°21.12' W. long.;

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 061227341-6341-01; I.D. 120406A]

RIN 0648-AU99

Fisheries in the Western Pacific; Hawaii Shallow-set Longline Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would permanently remove the 7-day delay in effectiveness when closing the Hawaii-based shallow-set longline fishery as a result of reaching interaction limits for sea turtles. This action would allow immediate closure of the fishery, and would enhance protection of sea turtles.

DATES: Comments on the proposed rule must be received by January 31, 2007.

ADDRESSES: You may submit comments, identified by "AU99" by any of the following methods:

- E-mail: AU99Swordfish@noaa.gov. Include "AU99" in the subject line of the message.

- Federal e-Rulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.

- Mail: William L. Robinson, Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd. 1110, Honolulu, HI 96814.

In accordance with the Endangered Species Act, a Biological Opinion, dated February 23, 2004, was prepared for the longline fishery, which operates under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). Copies of the Biological Opinion are available from William L. Robinson (see **ADDRESSES**).

Copies of the regulatory amendment may be obtained from Kitty M. Simonds, Western Pacific Fishery Management Council (WPFMC), 1164 Bishop St. 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS PIR, 808-944-2271.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the World Wide Web at the Office of the **Federal Register**: www.gpoaccess.gov/fr/index.html.

Background

The Hawaii-based pelagic longline fishery for swordfish, tunas, and related species is managed under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FMP). The Pelagics FMP was developed by the WPFMC under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the Pelagics FMP appear at 50 CFR part 665 and subpart H of 50 CFR part 600.

The regulations at § 665.33(b)(1) establish maximum annual limits on the numbers of interactions that occur between longline fishing operations and sea turtles. These limits apply to physical interactions experienced by vessels registered under Hawaii longline limited-access permits while engaged in shallow-set longline fishing. There are calendar-year annual limits on physical interactions for two species of sea turtles, one for leatherback sea turtles set at 16, and one for loggerhead sea turtles set at 17.

NMFS is required by the 2004 Biological Opinion to maintain 100-percent observer coverage in the Hawaii shallow-set longline fishery. Interactions with turtles are monitored using data from scientific observers placed by NMFS aboard all vessels engaged in shallow-set longline fishing.

The current regulations at § 665.33(b)(2) prescribe that as soon as the physical interaction limit for either of the two turtle species has been determined to have been reached in a given year, the shallow-set component of the Hawaii-based longline fishery must be closed by NMFS for the remainder of the calendar year, after giving permit holders at least seven days advance notice. Once that component of the fishery is closed, no vessel registered under a Hawaii longline limited-access permit may engage in shallow-set longline fishing north of the Equator.

The 7-day delay was intended to give NMFS adequate time to notify permit holders and vessel operators of the fishery closure. Based on the best information available on fishing activity levels and anticipated turtle interaction rates at the time when the regulations were first implemented, the 7-day delay in effectiveness offered by the advance notice provision was thought to provide adequate protection to sea turtles, while also providing adequate notice of the fishery closure to vessels at sea. At the time when the current regulations were implemented, NMFS observers placed aboard longline vessels were not issued

satellite telephones, and other communication methods were considered ineffective for notifying vessels at sea of a closure. More effective means of providing notification to active fishermen now exist; NMFS observers carry satellite telephones that enable effective communications between NMFS and each shallow-set vessel at sea.

Fishing activity levels and rates of turtle interactions in early 2006 were higher than expected, resulting in the fishery quickly reaching the limit on turtle interactions. To respond to the greater fishing activity and turtle interaction rates, and to prevent additional adverse impacts to turtles, fishery closure was facilitated by issuance of an emergency rule that suspended the 7-day delay in effectiveness for closing the fishery. The emergency rule that suspended the delay in effectiveness in closing the fishery was effective on March 20, 2006 (71 FR 14416, March 22, 2006). When the 2006 fishery was closed, NMFS notified the operator of each Hawaii-based shallow-set longline vessel, directly via the satellite telephone carried by the NMFS observer placed on the vessel. This allowed for immediate closure of the fishery. The limit on turtle interactions was not exceeded, maximizing protection to the turtles. To implement the closure, NMFS published a notice that closed the fishery, effective from March 20, 2006, through December 31, 2006 (71 FR 14824, March 24, 2006). NMFS subsequently published a notice extending until March 19, 2007, the emergency rule that suspends the advance notice provision (71 FR 54759, September 19, 2006).

At its 135th meeting on October 18, 2006, the WPFMC voted to recommend to NMFS that the regulations governing the notification to close the fishery be amended to permanently remove the 7-day delay in effectiveness. The amended regulations would close the shallow-set fishery immediately upon reaching either limit on turtle interactions. The WPFMC developed a regulatory amendment, which may be obtained from Kitty M. Simonds (see **ADDRESSES**). Copies of the regulatory amendment, environmental assessment, regulatory impact review, and initial regulatory flexibility analysis (IRFA) may be obtained from William L. Robinson (see **ADDRESSES**).

Classification

NMFS has determined that the proposed rule is consistent with the Pelagics FMP and has preliminarily determined that the rule is consistent

with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if promulgated, would have on small entities. A description of the proposed action, why it is being considered, and the objectives of and legal basis for the rule are described at the beginning of this section in the preamble and in the SUMMARY section of the preamble. There are no recordkeeping or reporting requirements associated with this proposed rule.

This proposed rule considered four alternative management measures including the proposed Alternative 2, which modifies existing regulations to close the shallow-set fishery immediately upon reaching a turtle interaction limit. Alternative 1, the no-action alternative, would continue to include a 7-day delay in effectiveness when closing the fishery. Alternative 3 would modify existing regulations to close the fishery immediately upon reaching the turtle interaction limit, plus change the fishing year with regards to monitoring the limit on sea turtle interactions. Alternative 4 would modify existing regulations to close the fishery immediately upon reaching the turtle interaction limit, plus utilize short-term time/area closures to decrease the number of turtle interactions and lengthen the fishing season.

Based on recent levels of participation in the shallow-set longline fishery, it is estimated that approximately 35 shallow-set longline vessels may be affected by this rulemaking. All are considered to be small entities as defined by the Small Business Administration (SBA) as follows: any fish-harvesting business is a small business if it is independently owned and operated and not dominant in its field of operation and has annual receipts not in excess of \$4 million.

Because all vessels are considered to be small entities, there are no disproportionate economic impacts between small and large vessels resulting from this proposed rule. Furthermore, there are no disproportionate impacts among the affected population of small entities based on vessel size, fishing gear, or geographical considerations, e.g., home port.

Based upon an estimated net revenue of \$3,099 per set, and assuming that one

set per day is the norm, the range of potential reduction in net revenues to individual swordfish vessels resulting from the implementation of the proposed Alternative 2 would be from \$0 to \$21,693 per closure, associated with a potential loss of 0–7 fishing days per vessel, respectively.

The relative impact of a closure on annual returns from the swordfish fishery would depend on how quickly the fishery is closed in any one year. For example, if the fishery was closed after 63 days, there would be an estimated 10 percent reduction in potential annual net revenues. If the fishery was closed after 133 days, there would be an estimated 5.0 percent reduction. After 273 days, an estimated 2.5 percent reduction would result, and so on. These projections assume that all shallow-set certificates were being utilized.

The loss in revenues could be mitigated by providing vessels with an early warning of projected closures, thus allowing the affected vessels to better plan for fishing operations. Better planning would avoid unnecessary trip preparation and allow the opportunity to change gear for fishing in alternative longline fisheries, such as the Hawaii-based deep-set (tuna) longline fishery. Alternative 1 (no action) would prevent direct economic losses to affected vessels. However, this alternative would not provide adequate protection to sea turtles. Alternatives 3 and 4 could partially mitigate the economic impacts to small entities associated with the proposed alternative by lengthening the fishing season, which would distribute landings to avoid flooding the market and allowing for price stability. The small entities also would be better able to plan their fishing operations, especially if they participate in another fishery when not targeting swordfish, and mitigate adverse economic impacts, such as unreasonably low prices, which can arise from the market becoming flooded as the fishery is closed and all vessels return to port. Because the high turtle interaction rates experienced in the 2006 fishing year may have been an anomaly, and in future years the fishery may not reach either turtle interaction limit, the time/area closures as proposed in Alternative 4, and the shifting of the shallow-set fishing season as proposed in Alternative 3 are not preferred at this time.

List of Subjects in 50 CFR Part 665

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

Reporting and recordkeeping requirements.

Dated: January 10, 2007.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

**PART 665—FISHERIES IN THE
WESTERN PACIFIC**

1. The authority citation for part 665 continues to read as follows:

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

2. In § 665.22, revise paragraphs (ss) and (tt) to read as follows:

§ 665.22 Prohibitions.

* * * * *

(ss) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set component of the longline fishery has been closed pursuant to § 665.33(b), in violation of § 665.33(i).

(tt) Fail to immediately retrieve longline fishing gear upon receipt of

actual notice that the shallow-set component of the longline fishery has been closed pursuant to § 665.33(b), in violation of § 665.33(i).

* * * * *

3. In § 665.33, remove paragraphs (b)(2)(iii) and (iv), and revise paragraphs (b)(2)(i) and (ii) to read as follows:

* * * * *

§ 665.33 Western Pacific longline fishing restrictions

* * * * *

(b) * * *

(2) * * *

(i) As soon as practicable, the Regional Administrator will file for publication at the Office of the Federal Register a notification of the sea turtle interaction limit having been reached. The notification will include an advisement that the shallow-set component of the longline fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, until the end of the calendar year in which the sea turtle interaction limit

was reached. Coincidental with the filing of the notification, the Regional Administrator will also provide actual notice that the shallow-set component of the longline fishery shall be closed, and that shallow-set longline fishing north of the Equator by vessels registered for use under Hawaii longline limited access permits will be prohibited beginning at a specified date, to all holders of Hawaii longline limited access permits via telephone, satellite telephone, radio, electronic mail, facsimile transmission, or post.

(ii) Beginning on the fishery closure date indicated by the Regional Administrator in the notification provided to vessel operators and permit holders and published in the **Federal Register** under paragraph (b)(3)(i) of this section, until the end of the calendar year in which the sea turtle interaction limit was reached, the Hawaii-based shallow-set component of the longline fishery shall be closed.

* * * * *

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