

northern boundary of section 3, T34N/R9W, on the Trinity Dam map;

(34) Continue generally northwest on the meandering 900-meter contour line and cross onto the Rush Creek Lakes map in section 34, T35N/R9W; continue northwesterly on the contour line over Cummings Creek, Bear Gulch, Snowslide Gulch, Sawmill Creek, and Van Matre Creek; cross onto the Siligo Peak, California quadrangle map and continue generally northwest on the 900-meter contour line over Middle Creek and Owens Creek to the contour line's intersection with Stuart Fork;

(35) Continue generally southeast on the 900-meter contour line over Fire Camp Creek, Lightning Creek, and Sunday Creek; cross onto the Rush Creek Lakes map and continue generally southeast on the contour line over Elk Gulch and Trinity Alps Creek; cross onto the Trinity Dam map in section 27, T35N/R9W, and proceed easterly along the contour line to its intersection with the eastern boundary of section 27, T35N/R9W;

(36) Continue generally north along the 900-meter contour line through sections 26 and 23, T35N/R9W, cross onto the Covington Mill, California quadrangle map in section 23, T35N/R9W, and continue northerly along the contour line to its intersection with Stoney Creek in the same section;

(37) From Stoney Creek, continue generally south on the 900-meter contour line, cross back onto the Trinity Dam map in section 23, T35N/R9W, and continue southerly on the contour line through sections 23, 26, and 35 to the contour line's intersection with the eastern boundary of section 35, T35N/R9W, near that section's northeast corner;

(38) Continue generally northeast on the meandering 900-meter contour line over Telephone Ridge, Buck Gulch, and Buck Ridge; cross onto the Covington Mill map in section 19, T35N/R8W, and continue northwesterly along the contour line across Mule Creek and Snowslide Gulch in section 13, T35N/R9W; continue on the contour line, cross Little Mule Creek in section 18, T35N/R8W, and continue southeasterly on the contour line to its intersection with a line marked "TRANS LINE SINGLE WOOD POLES" in section 20, T35N/R8W;

(39) Continue generally northeast along the 900-meter contour line through sections 20 and 17, T35N/R8W, and cross Strobe Creek, Mosquito Gulch, Greenhorn Gulch, Taylor Gulch, Stuart Fork (in section 5, T35N/R8W), and Davis Creek; cross onto the Trinity Center map in section 35, T36/R8W, and continue on the contour line to its

intersection with the northern boundary of that section;

(40) Proceed due east along the northern boundary of sections 35 and 36, T36N/R8W, to the R8W/R7W range line at the northeast corner of section 36;

(41) Follow the R8W/R7W range line due north onto the Carrville map and continue along the range line to its intersection with township line T38N/T37N at the northwest corner of section 6, T37N/R7W; and

(42) Proceed due east along township line T38N/T37N and return to the beginning point at the northwest corner of section 5, T37N/R7W.

Signed: December 3, 2003.

**Arthur J. Libertucci,**

*Administrator.*

[FR Doc. 03-31052 Filed 12-16-03; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[Docket No.031202301-3301-01; I.D. 111403C]

**RIN 0648-AR53**

#### Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes to prohibit shallow longline sets of the type normally targeting swordfish on the high seas in the Pacific Ocean east of 150° W. long. by vessels that are not already prohibited from making such sets under the current regulations for the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (WesPac FMP). This action is intended to protect endangered and threatened sea turtles from the adverse impacts of shallow longline fishing by U.S. longline fishing vessels in the Pacific Ocean and operating out of the west coast instead of Hawaii. This rule would supplement the regulations proposed to implement the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP) that would prohibit shallow longline sets on the high seas in the Pacific Ocean west of 150° W. long. by vessels that would be managed under

that FMP. The FMP is currently under review by NMFS and will be approved, disapproved or partially approved in early February 2004. Together, these two regulations are expected to conserve leatherback and loggerhead sea turtles as required under the Endangered Species Act (ESA).

**DATES:** Comments on the proposed rule must be received or transmitted by facsimile by 5 p.m., Pacific Standard Time, on January 16, 2004. Comments transmitted via e-mail or the Internet will not be accepted.

**ADDRESSES:** Comments should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, or by fax (562) 980-4027.

Copies of the FMP, which includes an environmental impact statement (EIS) accompanied by a regulatory impact review (RIR) and an initial regulatory flexibility analysis (IRFA) are available on the internet at <http://www.pcouncil.org/hms/hmsfmp.html> or may be obtained from Daniel Waldeck, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220-1384, [Daniel.Waldeck@noaa.gov](mailto:Daniel.Waldeck@noaa.gov), (503) 820-2280. This proposed action corresponds to the High Seas Pelagic Longline Alternative 3 in the Council EIS, RIR, and IRFA.

**FOR FURTHER INFORMATION CONTACT:** Tim Price, NMFS, Southwest Region, Protected Resources Division, (562) 980-4029.

**SUPPLEMENTARY INFORMATION:** All species of sea turtles that are known to interact with U.S. longline vessels in the Pacific Ocean are listed as either endangered or threatened under the ESA. The leatherback (*Dermochelys coriacea*) sea turtle is listed as endangered. The loggerhead (*Caretta caretta*), olive ridley (*Lepidochelys olivacea*), and green (*Chelonia mydas*) sea turtles are listed as threatened, except for populations of olive ridleys on the Pacific coast of Mexico and green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. Under the ESA and its implementing regulations (50 CFR 223.205), taking endangered and threatened sea turtles, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The incidental taking of an endangered species of wildlife within the United States, U.S. territorial sea, or high seas is prohibited by section 9(a)(1)(B) and (C) of the ESA. The incidental take of endangered species may be authorized only by an incidental take statement issued under

section 7 of the ESA or an incidental take permit issued under section 10 of the ESA. The incidental take of threatened species may be authorized only by an incidental take statement in a biological opinion issued pursuant to section 7 of the ESA, an incidental take permit issued pursuant to section 10 of the ESA, or regulations under section 4(d) of the ESA. Pursuant to section 11(f) of the ESA, the Secretary of Commerce is authorized to promulgate regulations to enforce the requirements of the ESA.

#### **West Coast-Based Pelagic Longline Fishery**

Since the early 1990s, a number of longline vessels targeting swordfish and, possibly, tuna, although no sets have been documented, have unloaded their catch and re-provisioned in California ports. Participation has declined from a peak of 43 vessels participating in the fishery in 2001 and 38 vessels in 2000, to approximately 28 vessels in 2002 and an estimated 20–25 vessels in 2003. Almost all of these vessels had some history of fishing in the Hawaii-based longline fishery. Participants in the West Coast-based pelagic longline fishery often fish more than 1,000 nautical miles (1,900 km) offshore and are generally prohibited by state regulations from fishing within 200 nautical miles (370 km) of the West Coast. Longline vessels registered in West Coast states are allowed to land longline caught fish into West Coast ports provided that fishing takes place outside the 200-mile Exclusive Economic Zone. All documented longline fishing by West Coast vessels in recent years has been out of California ports.

NMFS began placing observers aboard West Coast-based pelagic longline fishing vessels on a voluntary basis in October 2001 and began a mandatory observer program in August 2002 under the Marine Mammal Protection Act. From October 2001 through May 2003, 280 sets were observed on 13 trips, documenting a total of 27 sea turtle interactions, consisting of two leatherback sea turtles, 24 loggerhead sea turtles, and one olive ridley sea turtle. All of the observed sea turtles were released alive.

#### **High Seas Fishing Compliance Act**

On March 22, 1996, NMFS issued an interim final rule (61 FR 11751) to implement the High Seas Fishing Compliance Act of 1995 (HSFCA). The purpose of the HSFCA is to license U.S. vessels fishing on the high seas and to implement the Agreement to Promote Compliance with International

Conservation and Management Measures by Fishing Vessels on the High Seas. The West Coast-based pelagic longline vessels are permitted under the HSFCA. In May 2001, the Center for Biological Diversity and Turtle Island Restoration Network filed a complaint with the U.S. District Court for the Northern District of California alleging that NMFS unlawfully failed to conduct an ESA section 7 consultation on the West Coast-based pelagic longline fishery when issuing the HSFCA permits for this fishery. On November 27, 2001, the court denied the plaintiffs' motion and ruled in favor of NMFS. In response, the plaintiffs appealed the decision to the Ninth Circuit Court of Appeals in December 2001. On August 21, 2003, the Ninth Circuit Court ruled that NMFS is required to engage in consultation under section 7 of the ESA regarding the effects on sea turtles and other listed species when issuing fishing permits under the HSFCA to West Coast-based pelagic longline fishing vessels. Consequently, the effects of issuing of HSFCA permits that authorize fishing by West Coast-based pelagic longline vessels will be considered during the section 7 consultation that is now being conducted. Furthermore, this proposed rule, if adopted, would be the vehicle by which NMFS imposes conditions and restrictions on the HSFCA permits (16 U.S.C. 5503(d)) held by West Coast-based pelagic longline vessels to ensure the fishery complies with the ESA.

#### **Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species**

On October 31, 2003, the Pacific Fishery Management Council (Council) submitted the FMP to NMFS for review. After a public comment process, NMFS will approve, disapprove, or partially approve the FMP, and then implement those portions that were approved (if any). The FMP includes management measures for the West Coast-based pelagic longline fishery that would prohibit shallow longline sets of the type normally used to target swordfish on the high seas in the Pacific Ocean west of 150° W. long. by vessels managed under the new FMP. The FMP would not prohibit West Coast-based pelagic longline vessels from targeting swordfish in waters east of 150° W. long. It should be noted that Hawaii-based longline vessels are currently prohibited from targeting swordfish in this area, pursuant to regulations under the WestPac FMP. Those regulations will be vacated on April 1, 2004, by Court Order. NMFS will propose regulations with any necessary restrictions or

prohibitions for vessels operating under the WestPac FMP. The regulations that will be proposed under the WestPac FMP will be subject to NEPA review and ESA Section 7 consultation.

In addition, to conserve sea turtles, the FMP would require West Coast-based pelagic longline vessels to have on board and to use dip nets, line cutters, and wire or bolt cutters capable of cutting through the vessel's hooks to release sea turtles with the least harm possible to the sea turtles. NMFS issued a proposed rule to implement the FMP on December 10, 2003 (68 FR 68834).

#### **Estimated Sea Turtle Take Levels**

There are two sets of data from which rates of sea turtle interactions in the West Coast-based pelagic longline fishery could be derived: (1) Data from observers on Hawaii-based longline vessels operating in the same areas as the West Coast-based pelagic longline vessels; and (2) data from observers on West Coast-based pelagic longline vessels. Vessels in the West Coast-based pelagic longline fishery fish in the same manner, and frequently in the same area, as vessels that had been targeting swordfish in the Hawaii-based longline fishery. Because of the strong similarities between these two fisheries and the limited amount of observer data available for the West Coast-based pelagic longline fleet alone, NMFS concluded that using the combined observer data from the Hawaii-based and West Coast-based longline fleets for fishing east of 150° W. long. is more likely to be representative of the sea turtle interaction rates that can be expected to occur throughout the West Coast-based pelagic longline fishery.

Using the combined observer data, NMFS developed estimates of sea turtle take levels that would result from the West Coast-based pelagic longline fishery under different fishery scenarios. Assuming that the West Coast-based pelagic longline fleet deploys 1.55 million hooks east of 150° W. longitude (the estimated fleet effort in 2002 according to the FMP), NMFS estimates the fishery under the FMP would result in the annual take of 174 loggerhead and 52 leatherback sea turtles. For loggerhead sea turtles, NMFS estimates that 3 may be entangled and no hooking or injury will occur, 74 may be hooked externally or entangled with line left on the animal, 97 may be hooked in the mouth or ingested the hook, and 0 may be released dead. For leatherback sea turtles, NMFS estimates that 0 may be entangled and no hooking or injury will occur, 46 may be hooked externally or entangled with line left on the animal, 6 may be hooked in the mouth or

ingested the hook, and 0 may be released dead. Applying the 27 and 42 percent post-release mortality rates developed by NMFS for sea turtles that have been hooked externally or entangled with line left on the animal and for sea turtles that have been hooked in the mouth or ingested the hook, preliminary estimates indicate that the West Coast-based pelagic longline fishery under the management measures proposed by the Council would result in the annual mortality of 61 loggerhead sea turtles and 15 leatherback sea turtles.

### **Impacts to Loggerhead and Leatherback Sea Turtle Populations**

The estimated takes and mortalities of loggerhead and leatherback sea turtles by the West Coast-based pelagic longline fishery under the proposed FMP exceed those authorized under the ESA in other Pacific fisheries. As an example, the agency's incidental take statement in the 2002 biological opinion on the western Pacific pelagic fisheries authorized takes in the Hawaii-based longline fishery of only 8 leatherback and 14 loggerhead turtles per year. In contrast, as calculated above, at the estimated fishing level of 2002, longline fishing for swordfish east of 150° W. long. would be expected to result in the take of 52 leatherback turtles and 174 loggerhead turtles.

As required under the ESA, NMFS is now conducting a formal consultation under section 7 of the ESA on the Council's FMP in order to determine if fishing activities proposed under the FMP are likely to jeopardize the continued existence of endangered or threatened species under NMFS' jurisdiction. Based on the severe decline and lack of recovery in loggerhead and leatherback sea turtles populations, and the extensive analyses conducted by the agency on existing threats to these populations, NMFS is concerned that the take levels expected to occur in the West coast-based pelagic longline fishery under the Council's FMP might be likely to jeopardize the continued existence of these species. If the section 7 consultation on the Council's FMP concludes that the action is likely to jeopardize the continued existence of endangered or threatened sea turtle species, then NMFS will be unable to authorize the expected amount of incidental take by the West Coast-based pelagic longline fishery under the Council's FMP.

Until NMFS completes a full analysis of the impacts of the Council's FMP on endangered or threatened sea turtles, NMFS cannot determine what measures will be included in the final regulations

of this fishery in order to conserve loggerhead and leatherback sea turtles. The consultation could conclude that the Council's FMP is not likely to jeopardize sea turtle populations. On the other hand, the consultation could conclude that the Council's FMP is likely to jeopardize the continued existence of sea turtle populations and include a reasonable and prudent alternative (RPA) that would mitigate sea turtle takes to avoid the likelihood of jeopardy. Mitigation measures may depend on the severity of the impact to sea turtle populations and could include effort reduction or a complete prohibition of swordfish fishing. The FMP contains framework procedures by which adjustments in conservation and management measures may be made through regulatory amendments if available information and conditions warrant it, and the RPA could provide a basis for such action. However, promulgation of regulations to implement the RPA could take several months to complete and leave fishers in a very difficult situation in the interim because they would lack an exemption from the take prohibition specified in section 9 of the ESA.

Given that NMFS anticipates an annual mortality of 61 loggerhead sea turtles and 15 leatherback sea turtles as a result of the West Coast-based pelagic fishery, NMFS is proposing to implement restrictions in the West Coast-based pelagic longline fishery in waters east of 150° W. long. to conserve leatherback and loggerhead sea turtles as required under the ESA. Under this rule, West Coast-based pelagic longline vessels would be prohibited from making shallow longline sets on the high seas in the Pacific Ocean east of 150° W. long. The prohibition of shallow longline sets west of 150° W. long. proposed under the FMP would also apply, if the FMP is approved and implemented by NMFS. The regulatory text of this proposed rule might be revised, as necessary, to comport with the RPA, if any, of the section 7 consultation on the FMP. As a result, NMFS is requesting comments on this rulemaking and any alternative management regime to conserve sea turtles.

There are several other factors that may ultimately affect the management of the West Coast-based pelagic longline fishery. As noted, the FMP contains framework procedures by which adjustments in conservation and management measures may be made through regulatory amendments if warranted by available information and conditions. Further, the FMP recognizes a potential for exempted fishing permits

that allow testing of alternative gear and/or techniques that might demonstrate that longline fishing can be conducted in a manner that will not adversely affect protected species or that will result in lower levels of bycatch. NMFS is conducting research in the Atlantic Ocean into gear and techniques that might allow longline fishing for swordfish or other species with less risk to sea turtles. Preliminary results from this research indicate that the use of 18/0 circle hooks with no offset and squid bait may reduce loggerhead and leatherback sea turtle capture rates by more than 80 and 50 percent, respectively. The use of 18/0 circle hooks with a 10 percent offset and mackerel type bait may reduce loggerhead and leatherback sea turtle capture rates by more than 90 and 65 percent, respectively. Additional treatments are being tested using 20/0 circle hooks and mackerel which also show promise with possible significant reductions in sea turtle catch rates. Large circle hooks have also been shown to reduce the rate of swallowed hooks which may decrease post-hooking mortality resulting from internal injuries. The best treatments for reducing the capture of loggerhead and leatherback sea turtles cannot be identified until the researchers analyze the data and their significance. However, based on these promising results, NMFS is considering allowing the use of circle hooks and mackerel type bait to target swordfish and is soliciting public comment on this alternative.

A similar experiment is planned for the central Pacific Ocean, pending completion of an Environmental Impact Statement. The results of these experiments will be provided to the Council. NMFS anticipates that the Council will review information as it is generated to consider possible changes in longline fishing regulations and may propose changes. NMFS will consider any such proposals, which could result in lessening the burden to fishermen while maintaining adequate protection of sea turtles under these regulations. NMFS will fully support the Council in examination and selection of appropriate protective measures. However, the need for protection of sea turtles in the near term warrants the use of Secretarial authority under the ESA (as well as under the HSFCA, 16 U.S.C. 5503(d)) to promulgate regulations in this fishery to ensure the fishery complies with the ESA.

## Classification

NMFS has determined that this proposed rule is consistent with the ESA and other applicable laws.

The impacts of this proposed action and alternatives are evaluated in accordance with the National Environmental Policy Act as the High Seas Pelagic Longline Alternative 3 in the EIS prepared by the Council (see **ADDRESSES**).

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

This proposed rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

The Council prepared a combined RIR/IRFA that describes the economic impacts of the Council's FMP, which includes an analysis of this proposed action as High Seas Pelagic Longline Alternative 3. The RIR/IRFA is available

from the Council (see **ADDRESSES**). A summary of the RIR/IRFA follows:

The **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this proposed rule provide a description of the action, why it is being considered, and the legal basis for this action. That information is not repeated here.

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.

This regulation imposes controls on the fleet of approximately 22–25 longline vessels that fish principally out of California ports for swordfish and associated species. A total of 28 vessels

participated in the West-coast-based pelagic longline fishery during 2002, down from a peak of 43 vessels in 2001 and from 38 vessels in 2000. 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. For most of the longline vessels involved, swordfish caught by longline gear makes up more than half the total revenue from fish sales. Table 1 presents total ex-vessel revenue and dependence on swordfish landings for the 38 West coast-based vessels with high seas pelagic longline swordfish landings in 2001, broken down by the number of vessels with varying percent dependence on swordfish. NMFS believes these data are representative of 2002 as well.

TABLE 1: TOTAL EX-VESSEL REVENUE AND DEPENDENCE ON SWORDFISH FOR 38 WEST-COAST-BASED 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%	\$228,951	32.57%
3	50 - 70%	\$170,067	60.99%
3	> 70 - 80%	\$222,089	76.66%
4	> 80 - 90%	\$258,335	86.77%
13	> 90 - 95%	\$182,211	93.26%
11	> 95%	\$219,885	97.57%

The impacts of alternatives to this proposed action were evaluated in the Council's RIR/IRFA. The Council considered three alternatives for managing the high seas pelagic longline fishery. Under Alternative 1 (Status Quo), the FMP would not impose regulations on this fishery. The Council assumes that in the short-run, the fishery would continue to operate as it currently does, earning average annual profits of \$6.7 million. However, in the long-run, the Council expected that regulations would be established under other authorities, such that over time the fishery would disappear, and long-run profits would become zero as the fishery was phased out.

Alternative 2 (Council Proposed Action) would maintain the fishery, allowing fishermen to continue targeting swordfish east of 150° W. long., but impose some additional costs on longliners targeting swordfish on the high seas. Short-run average annual profits would remain at \$6.7 million, minus the cost of adopting turtle and sea bird mitigation measures, accommodating observers, and using

monitoring equipment. NMFS is developing guidelines for the design and performance standards of equipment required for the handling of incidentally caught sea turtles. The required tools can be purchased, for an estimated maximum cost of \$2,000 per vessel, but vessel owners may also be able use the guidelines to fabricate the equipment with lower cost materials. Vessel owners do not pay an observer's salary, but do bear costs associated with providing room and board for the observer. Additionally, carrying an observer may increase the cost of insurance that the vessel carries. Vessel monitoring equipment costs approximately \$2,000 to purchase and \$500 to install, and would require annual maintenance estimated to cost approximately 20 percent of the purchase price per year. However, despite the equipment costs, the fishery would be able to land swordfish, and so over 25 years, the present value of long-run profits relative to the status quo would range between \$78 and \$105 million, using 7 percent and 4 percent discount rates, respectively.

Alternative 3, which is the same as this proposed action, would prohibit fishermen from targeting swordfish east of 150° W. long. Swordfish are the target species of this fishery. This would effectively eliminate all but incidental swordfish landings and the short- and long-run profits currently associated with landing swordfish (\$6.7 million, and \$78 million to \$105 million, respectively), at least until alternative fishing opportunities are identified. This loss assumes that all vessels in this fishery cease fishing, although longline fishing targeting tuna out of West Coast ports or Hawaii may be an alternative. However, 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.

Although no fishery interactions with the endangered short-tailed albatrosses (*Phoebastria albatrus*) have been recorded to date, on September 22, 2003, NMFS initiated section 7 consultation under the ESA with the U.S. Fish and Wildlife Service for this species. On September 24, 2003, formal

consultation with NMFS Protected Resources under the Endangered Species Act was initiated on the fisheries managed under the FMP, including the fisheries now permitted under the HSFA.

Based on the conclusions of the consultation, NMFS will determine if fishing activities under the FMP are likely to jeopardize the continued existence of endangered or threatened species under NMFS' jurisdiction. The results of this consultation will determine whether NMFS needs to implement the regulations outlined in this proposed rule in order to meet the requirements of the ESA. Based on analyses conducted during previous biological opinions, NMFS is concerned that the amount of take estimated to occur if fishing were managed under the Council's FMP might be likely to jeopardize the continued existence of leatherback and loggerhead sea turtles. Therefore, NMFS is proposing to implement a prohibition on shallow sets by West Coast-based pelagic longline vessels that has proven effective at reducing sea turtle encounters in the Hawaii-based pelagic longline fishery and the Atlantic pelagic longline fishery.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS is conferring with the States of California, Oregon, and Washington regarding this proposed rule. NMFS intends to continue engaging in informal and formal contacts with these States during the implementation of this proposed rule and review of the FMP.

#### List of Subjects

#### 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

#### 50 CFR Part 223

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

Dated: December 11, 2003.

**Rebecca Lent,**

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

For the reasons set out in the preamble, 50 CFR parts 222 and 223 are proposed to be amended to read as follows:

#### PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

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

**Authority:** 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701; § 222.403 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 222.102, the following definitions are added alphabetically, to read as follows:

#### § 222.102 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 or of nylon or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

\* \* \* \* \*

*Pelagic longline gear* means longline gear consisting of 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.

\* \* \* \* \*

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

3. 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.*; 16 U.S.C. 5503(d) for § 223.206(d)(9)

4. In § 223.206, a new paragraph (d)(9) is added to read as follows:

#### § 223.206 Exceptions to prohibitions relating to sea turtles.

\* \* \* \* \*

(d) \* \* \*

(9) *Restrictions applicable to Pacific pelagic longline vessels.* In addition to the general prohibitions specified in

§ 600.725 of Chapter VI, it is unlawful for any person who is not operating under a western Pacific longline permit under § 660.21 to do any of the following:

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

(ii) Possess a light stick on board a longline vessel when fishing on the high seas of the Pacific Ocean north of the equator.

(iii) Possess a light stick on board a longline vessel on the high seas of the Pacific Ocean north of the equator. A light stick as used in this paragraph is any type of light emitting device, including any fluorescent glow bead, chemical, or electrically powered light that is affixed underwater to the longline gear.

(iv) Possess more than 10 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing in the Pacific Ocean north of the equator (0° lat.).

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

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

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

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

\* \* \* \* \*

[FR Doc. 03–31140 Filed 12–16–03; 8:45 am]

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