

affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by December 19, 2011, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed.

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

Dated: October 17, 2011.

**Alan D. Risenhoover,**

Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 110211137-1599-01]

**RIN 0648-BA87**

#### Fisheries Off West Coast States; Highly Migratory Species Fisheries; Swordfish Retention Limits

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to modify retention limits for swordfish, *Xiphias gladius*, harvested in the U.S. West Coast-based deep-set tuna longline (DSL) fishery. The DSL fishery is managed under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The proposed rule would implement the Pacific Fishery Management Council's (Council) recommendation to modify HMS FMP regulations governing the possession and landing limits of swordfish captured in the DSL fishery, contingent on hook type and fisheries observer presence. If a vessel without an observer onboard uses any J-hooks (tuna hooks), the trip limit would be 10 swordfish. If a vessel without an observer onboard uses only circle hooks, the trip limit would be 25 swordfish. If the vessel carries a NMFS-approved observer during the entire fishing trip,

there would be no limit on swordfish retained. Regulations prohibiting the use of shallow-set longline gear to target swordfish would remain in place.

**DATES:** Comments must be received by November 21, 2011.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2011-0211, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA-NMFS-2011-0211 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- **Mail:** Submit written comments to Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

- **Fax** (562) 980-4047; Attn: Rodney R. McInnis.

**Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Craig Heberer, Sustainable Fisheries Division, NMFS, 760-431-9440, ext. 303.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This proposed rule is also accessible at (<http://swr.nmfs.noaa.gov/>). An electronic copy of the current HMS FMP and accompanying appendices are available on the Pacific Fishery Management Council's Web site at

<http://www.pcouncil.org/hms/hmsfmp.html>.

The HMS FMP was developed by the Council in response to the need to coordinate state, Federal, and international management of HMS stocks. The management unit in the FMP consists of highly migratory species (tunas, billfish, and sharks) that occur within the West Coast (California, Oregon, and Washington) Exclusive Economic Zone (EEZ) and to a limited extent on adjacent high seas waters. NMFS, on behalf of the U.S. Secretary of Commerce, partially approved the HMS FMP on February 4, 2004 (69 FR 18444). The majority of HMS FMP implementing regulations became effective on April 7, 2004. Reporting and recordkeeping provisions became effective on February 10, 2005.

Since being adopted in 2004, the HMS FMP has been amended twice. On June 7, 2007, NMFS approved Amendment 1 to the HMS FMP to incorporate recommended international measures to end overfishing of the Pacific stock of bigeye tuna, *Thunnus obesus*, in response to formal notification from NMFS that overfishing was occurring on this stock. On June 12, 2011, NMFS approved Amendment 2 to the HMS FMP (76 FR 56328) to ensure that it is consistent with revised guidelines to implement National Standard 1 of the MSA in order to more effectively prevent overfishing and rebuild overfished stocks, or stocks that may become overfished.

In a letter dated July 16, 2010, the Council received a request to modify HMS FMP longline regulations at 50 CFR 660.712. To avoid interactions with sea turtles, those regulations prohibit vessels based on the West Coast from using longline gear to make shallow sets. Longline vessels that make deep sets with longline (DSL) are limited to landing 10 swordfish per trip. The trip limit was implemented to prevent vessels departing ostensibly to fish DSL gear targeting bigeye and yellowfin tuna, from switching to make shallow sets using longline (SSL) that is used to target swordfish, and that might result in higher incidental catch rates of sea turtles. The letter to the Council requested that these regulations be modified to increase the trip limits on swordfish, in order to make them consistent with regulations implementing the Western Pacific Fishery Management Council's Pacific Pelagics Fishery Ecosystem Plan (FEP) governing DSL fishing retention limits. Specifically, the letter requested that the Council modify 50 CFR 660.712 governing the DSL fishery by recommending removal of the 10

swordfish per trip limit in light of the Western Pacific Fishery Management Council's recommendation to do the same at their 148th meeting on June 28–July 1, 2010.

The Council considered the request to modify the trip limit and determined that the current HMS FMP regulations, which proscribe SLL fishing and set specific trip limits on swordfish catch, provide adequate controls on both DSL and SLL fishing. However, the Council noted that the single vessel in the DSL fishery has 100% observer coverage, and that coverage reduces the likelihood of that vessel engaging in SLL fishing. Additionally, the Council found that the deterrent effect to SLL fishing provided by the 100% observer coverage makes the current 10 swordfish per trip limit unnecessary for longline fishermen. Moreover, the Council noted that the 10 swordfish per trip limit might create regulatory discards (a form of bycatch) and potential loss of income from the sale of swordfish harvested in excess of the current retention limit.

In response to these findings, in November 2010, the Council recommended to NMFS that the regulations at 50 CFR 660.712 be modified. Specifically, the Council recommended retaining the 10 swordfish limit for DSL vessels fishing with J-hooks (tuna hooks), because those types of hooks have higher sea turtle bycatch rates, and the trip limit acts as a deterrent to engaging in fishing practices that may result in sea turtle bycatch. The Council recommended changing the trip limits for vessels fishing without observers but using circle hooks, because those types of hooks are known to minimize the bycatch and mortality of sea turtles. However, for trips with a NMFS-approved observer, the Council recommended removing the trip limits, because the observer acts a sufficient deterrent to SLL activities prohibited by the rules.

If implemented, this proposed rule will assist vessels in the DSL fishery by reducing the unnecessary discard of swordfish (regulatory “bycatch” under the Magnuson Act) when a vessel employs DSL fishing methods known to reduce the risk of incidentally catching sea turtles. It will also benefit the DSL vessels by allowing them to land a greater number of swordfish than allowed under the current regulations, which will result in fishermen to realizing greater profits from DSL fishing trips, especially those with NMFS-approved observer coverage. Furthermore, by not forcing fishermen to discard so many swordfish, bycatch

levels will be minimized as required by National Standard 9 of the MSA.

#### Classification

NMFS has determined that the proposed rule is consistent with the HMS FMP and preliminarily determined that this proposed rule is consistent with the MSA and other applicable laws.

An Initial Regulatory Impact Review was conducted to analyze the potential economic impacts and costs of this proposed rule.

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

Under the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for that determination is as follows:

The proposed rule would revise the HMS FMP to modify the current regulation, which allows a maximum of 10 swordfish per trip when using authorized DSL gear regardless of hook type or the presence of an observer on any given trip. The proposed action would impose a trip limit of 10 swordfish when using J-hooks (tuna hooks), and 25 swordfish when using circle hooks. For trips carrying an observer there would be no retention limit in place, regardless of hook type, because the observer's coverage on the trip reduces the likelihood of the vessel engaging in fishing practices prohibited by the regulations, or that would result in sea turtle bycatch.

There is currently a single longline fisherman operating in the DSL fishery based out of the U.S. West Coast, and that is the only entity expected to be affected by this rule. The annual revenue generated by that single fisherman is unknown, but for the purpose of this analysis, that entity is considered to be a small business. However, the proposed action is expected to have only positive (and quite minor) economic impacts on the effected entity, because it would not change the number of permitted vessels authorized to fish or the manner in which the fishery is prosecuted, nor would it impose any additional reporting, procedural or other requirements on the affected entity. Indeed, the rule would allow fishermen carrying observers to retain and sell more swordfish than they can under the current regulations, but even then the numbers of swordfish caught by the

DSL fishery are expected to be relatively small, and the additional potential income de minimis relative to the economics of a fishing trip in this fishery. The population of north Pacific swordfish is considered healthy and not in an overfished condition or experiencing overfishing. There are no quotas or harvest guidelines in place under the HMS FMP for swordfish.

Accordingly, and as a result of this analysis, an initial regulatory flexibility analysis is not required and none has been prepared.

#### List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 17, 2011.

**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 660 is proposed to be amended as follows:

#### PART 660—FISHERIES OFF THE WEST COAST STATES

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

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

2. In § 660.705, revise paragraphs (s) and (mm) to read as follows:

##### § 660.705 Prohibitions.

\* \* \* \* \*

(s) If no observer is on the vessel and J-type fishing hooks are used, possess more than 10 swordfish; if no observer on the vessel and only circle-type fishing hooks are used, possess more than 25 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing west of 150 °W. long. and north of the equator (0 °lat.) in violation of § 660.712(a)(9).

\* \* \* \* \*

(mm) Except when fishing under a western Pacific longline limited entry permit issued under § 660.21, possess more than 10 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing on the high seas of the Pacific Ocean west of 150 °W. long. north of the equator in violation of § 660.720 (a)(3).

\* \* \* \* \*

3. In § 660.712, revise paragraphs (a)(10) and (a)(11) to read as follows:

##### § 660.712 Longline fishery.

(a) \* \* \*

(10) If no observer on board the vessel, 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 when using any J-type fishing hooks, and no more than 25 swordfish from a fishing trip when using only circle hook-type fishing hooks.

(11) Owners and operators of longline vessels registered for use of longline gear are subject to the provisions at 50 CFR part 223 prohibiting shallow sets to

target swordfish in waters beyond the U.S. EEZ and east of 150 °W. long.

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