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U.S. West Coast Highly Migratory Species FMP Commercial Charter Recreational Vessels - Compliance Guide

This Guide is published in compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act and is intended to provide a plain-language summary of how small businesses can comply with the regulations published in the final rule to implement the U.S. West Coast Highly Migratory Species Fisheries Management Plan (HMS FMP).

Copies of the HMS FMP final rule regulations and this Compliance Guide are posted on the NMFS SWR website at: <http://swr.nmfs.noaa.gov>

Since fishery rules frequently change, fishermen must familiarize themselves with the latest regulations and are responsible for complying with the current official regulations set forth in the Code of Federal Regulations at 50 CFR part 660¹.

If there is a discrepancy between the regulations in 50 CFR part 660 and the responses given in this Guide, the regulations take precedence

Summary of the HMS FMP Final Rule Management Measures and Regulations

The HMS FMP final rule implements rules and regulations necessary for federal management of U.S. Fishing vessels targeting HMS within the U.S. West Coast exclusive economic zones (EEZ) of California, Oregon, and Washington and the adjacent high seas waters. The principal actions defined in the HMS FMP include, among others, 1) a new HMS permit, 2) mandatory logbook requirements, 3) new observer programs, 4) designating prohibited species, 5) harvest guidelines for certain shark species, 6) incidental catch limits for non-HMS gears 7) prohibition on sale of striped marlin, and 8) restrictions on the use of drift gillnets and pelagic longlines. The HMS FMP defines and aims to prevent overfishing, describes and protects essential fish habitat, and documents

¹ The Code of Federal Regulations at 50 CFR part 660 is available on-line at: http://www.access.gpo.gov/nara/cfr/waisidx_03/50cfr660_03.html

and minimizes bycatch of fish and interactions with protected species such as marine mammals, seabirds, and turtles.

The HMS FMP identifies 13 highly migratory species as management unit species and defines the legal gear types and management measures used to harvest them. HMS FMP species include striped marlin, swordfish, common thresher shark, pelagic thresher shark, bigeye thresher shark, shortfin mako (bonito shark), blue shark, north Pacific albacore, yellowfin tuna, bigeye tuna, skipjack tuna, northern bluefin tuna, and dorado (commonly referred to as mahi mahi and dolphinfish).

Question. What recreational fishing gear is allowed?

(see § 660.702)

The following gears are authorized for the recreational harvest of HMS in the EEZ by all permitted vessels, and beyond the EEZ by vessels landing in West Coast ports. Gear that is not defined as legal gear is prohibited under the HMS FMP final rule. Specific management measures regulating the use of legal gear types will be developed if necessary, using the framework procedures of the HMS FMP.

HMS Recreational Gear

Rod and Reel (pole and line): a hand-held (including rod holder) fishing rod with a manually or electrically operated reel attached.

Spear: a sharp, pointed, or barbed instrument on a shaft. Spears can be operated manually or shot from a gun or sling.

Hook and Line: one or more hooks attached to one or more lines (excludes mousetrap gear).

Q. What is the annual fishing season?

(see § 660.709)

The fishing year for all HMS fisheries will begin at 0801 GMT (0001 local time) on April 1 of each year and terminate at 0800 GMT on March 31 (2400 local time) of each year.

Q. What is the management area under which these regulations apply?

(see § 660.703)

This HMS FMP final rule applies to all U.S. vessels that fish for HMS within the EEZ (3-200 nautical miles) off California, Oregon or Washington and to U.S. vessels that pursue HMS on the high seas (seaward of the EEZ) and land their fish in California, Oregon or Washington. The HMS FMP final rule does not apply to U.S. vessels that fish for HMS on high seas and land into a non-U.S. port. Additional restrictions apply for Western Pacific longline permitted vessels landing into West Coast ports.

Q. What are the HMS permit requirements?

(see § 660.707)

A recreational charter vessel must be registered for use under a HMS permit if that vessel is used to fish for HMS in the U.S. EEZ off the States of California, Oregon, and Washington; or to land or transship HMS shoreward of the outer boundary of the U.S. EEZ off the States of California, Oregon, and Washington. The HMS FMP final rule requires issuance of an HMS permit to a vessel owner for each specific recreational charter fishing vessel with an endorsement for a specific HMS gear type.

Q. Do I need to show proof of previous fishing effort and landings to qualify for an HMS permit?

No, at this time there are no qualification criteria, such as minimum amount of landings, to obtain specific HMS gear endorsements. This new HMS permit will not eliminate existing state permit or licensing requirements, nor would federal permits under the High Seas Fishing Compliance Act be eliminated. The permits and endorsements are subject to sanctions, including revocation, as provided by Section 308(g) of the Magnuson-Stevens Act.

The new HMS permit applications are being mailed out to vessel owners on these lists. Completed applications are to be sent to the National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA, 90802 (Attention: HMS Permit).

Persons who have not been sent an application form within 60 days of the effective date of the final rule and who want a permit are obligated to apply for an HMS permit by contacting the Southwest Region, NMFS at (562) 980-4030. The application can also be downloaded from the Southwest Region home page:

<http://swr.nmfs.noaa.gov/permits.htm>

Permit requirements will be effective 60 days after the date of publication in *the Federal Register* of a notice announcing approval of the Paperwork Reduction Act clearance request for this information collection. Fishing is allowed without an HMS permit until the permit requirements are in effect.

Q. How do I display my permit once it has been issued?

The HMS permit must be onboard the vessel at all times and must be available for inspection upon the request of an authorized officer, unless the permit was issued while the vessel was at sea. If issued while the vessel was at sea, the permit must be onboard and available for inspection during any subsequent trip.

Q. When will my permit expire and how do I renew it?

Permits are valid for two years from date of issuance. Permit holders will receive a renewal notice approximately ninety days prior to the permit expiration date. The permit

holder will review the information provided by the notice, make any necessary changes, and return it to the permit office before the permit expiration date.

The first permit expiration date will occur during the second calendar year after the permit is issued, on the last day of the month which corresponds with the last digit of the vessel identification number. For example, for permits issued in 2004, if the vessel identification number ends in the number "7", the first expiration of the permit will occur on July 31, 2006. Thereafter, the permit will expire every two years on July 31.

Q. What are the vessel marking requirements?

(see § 660.704)

Each fishing vessel 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. The official number must be affixed to each vessel in block Arabic numerals at least 10 inches (25.40 cm) in height for vessels more than 25 ft (7.62 m) but equal to or less than 65 ft (19.81 m) in length; and 18 inches (45.72 cm) in height for vessels longer than 65 ft (19.81 m) in length. Markings must be legible and of a color that contrasts with the background.

Q. What are the HMS FMP reporting requirements?

(see § 660.708)

Catch, effort, and catch disposition data are critical for monitoring HMS fisheries, assessing the status of the stocks, and evaluating the effectiveness of management. Recreational charter vessels are required to maintain logbooks. All information specified on the logbook forms must be recorded on the forms within 24 hours after the completion of each fishing day.

Q. When do I turn the logbooks in?

The original logbook form for each day of the fishing trip must be submitted to NMFS 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.

Q. I already keep a logbook, will I have to fill out a separate logbook under this HMS FMP final rule?

Recreational Charter HMS logbooks required by the fishery management agencies of the States of California, Oregon, or Washington (and approved by NMFS) will be acceptable under the HMS FMP final rule and duplicate logbooks will not be required. For example, the State of California requires a logbook for recreational charter vessels which has been deemed acceptable for purposes of the HMS FMP. The States of Oregon and Washington do not currently have mandatory logbook programs for HMS charter recreational vessels but development of an acceptable logbook is underway in consultation with State fishery

management staff. Any holder of an HMS permit that does not submit logbooks under any of the above authorities must, by written request, apply to NMFS SWR office for the appropriate logbook². The applicant must provide his or her name and address, the name of the vessel, and the type of fishing gear used.

Q. What are the requirements for carrying Fishery Observers?

(see § 660.719 and 600.746)

All U.S. fishing vessels operating in HMS fisheries (including catcher/processors, at-sea processors, and vessels that embark from a port in Washington, Oregon, or California and land catch in another area), may be required to carry a NMFS certified observer on board to collect scientific data when directed to do so by the NMFS Regional Administrator. 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.

When NMFS notifies the permit holder or designated agent of the obligation to carry an observer, the vessel may not engage in the fishery without taking the observer

Observer programs will be implemented in accordance with the procedures at 50 CFR 660.719 and 600.746. Observers may not depart on a fishing trip aboard a vessel that does not comply with USCG safety requirements or that does not display a current commercial fishing vessel safety examination decal. The vessel owner or operator must also allow an observer to visually inspect any safety or accommodation requirement if requested. The permit holder must provide living quarters comparable to crew members and are provided the same meals, snacks, and other considerations as are normally provided to other vessel personnel. NMFS will reimburse provision expenses per instructions provided.

The permit holder, vessel operator, and crew must cooperate with the observer and allow access to VMS, communication, and navigation equipment necessary to conduct observer duties. The observer must be notified in a timely fashion when commercial fishing operations are to begin and end and be provided with accurate vessel locations by latitude and longitude or loran coordinates upon request.

Q. If I already carry NMFS observers under the MMPA or the ESA, do I have to take observers under the HMS FMP final rule as well?

No, you will not be required to carry an additional NMFS Observer. The HMS FMP final rule data collection elements will be combined with data collection elements currently being recorded by observers under MMPA and ESA mandates. NMFS will work with industry to make every effort to minimize observer interruptions to normal fishing operations.

² Examples of logbooks acceptable to meeting the reporting requirement may be found at: <http://swr.nmfs.noaa.gov/logbooks.htm>

Q. Will the HMS FMP impose limited entry for any or all of the HMS gear types?
(see § 660.717)

Not at this time. A Federal limited entry program is not 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 HMS FMP.

Q. Does the HMS FMP establish a control date?

Yes. The Council adopted a control date of March 9, 2000 in case a limited entry program is needed in the near future. This date was announced in the *Federal Register* as an advance notice to the public that a limited entry program may be adopted, and that any new entrants in the fishery after the control date may not qualify for a permit. The announcement applies to all commercial and charter fisheries for highly migratory species. Control dates are established to minimize the rush of new entrants into a fishery that often occurs when limited entry is being considered. Except for the swordfish drift gillnet fishery off California, the highly migratory species fisheries are among the few remaining open access fisheries on the West Coast. However, some members of the fishing industry are concerned that reductions in other fisheries (like groundfish) could push more people into HMS fisheries, increasing fishing pressure. As a result of these concerns, the Council may consider developing a limited entry program to control excess capacity.

Q. Are there any quotas or harvest guidelines?
(see 50 CFR § 660.711)

A harvest guideline is a numerical harvest level that is a general objective and is not a quota. A quota is a specified numerical harvest objective, the attainment of which triggers the closure of the fishery or fisheries for that species. At this time, there are no quotas for HMS species. The HMS FMP final rule establishes annual harvest guidelines of **three hundred forty (340) metric tons for common thresher sharks and one hundred fifty (150) metric tons for shortfin mako sharks**. Because total catches and basic population dynamic parameters for these shark species are poorly known, they are being managed using precautionary harvest guidelines.

Q. What species are prohibited to retain?
(see § 660.705)

The following species are prohibited to retain under the HMS FMP final rule: great white, basking and megamouth sharks, Pacific halibut, and pink, chinook, chum, sockeye and coho salmon. In general, prohibited species must be released immediately if caught, unless other provisions for their disposition are established in accordance with HMS FMP final rule guidelines. In addition, U.S. citizens fishing in waters covered under this HMS

FMP final rule are bound by the rules and regulations set forth in the Shark Finning Prohibition Act of 2002³. The Act prohibits, among other things, any person subject to U.S. jurisdiction from (1) engaging in shark finning, (2) possessing shark fins aboard a U.S. fishing vessel without the corresponding carcass, or (3) landing shark fins without a corresponding carcass.

The HMS FMP final rule prohibits the sale of striped marlin by all vessels as a means to provide for and maximize recreational fishing opportunities. Striped marlin is considered to have far greater value as a recreational rather than a commercial target species, and is only available seasonally. Prohibiting sale removes the incentive for commercial fishermen to take striped marlin.

Q. What are the HMS FMP regulations for protected species?

(see §§ 660.712, .713, .720 and 229.31 and 226.206)

Longline and drift gillnet vessels encounter endangered and threatened sea turtles and marine mammals during fishing operations. Longline vessels also encounter significant numbers of sea birds, including the endangered short tailed albatross. Appendix 1 of this Guide summarizes safe handling and release requirements for seabirds captured during longline fishing operations.

Various federal laws provide protection for marine species inhabiting the waters bound by the HMS FMP, including the Endangered Species Act, the Marine Mammal Protection Act, and the Migratory Bird Treaty Act. The HMS FMP final rule adopts measures to minimize interactions of HMS gears with protected species and to ensure that the fisheries are operating consistent with federal law. These measures include time and area closures, gear requirements, and safe handling and release techniques for protected seabirds and sea turtles⁴.

Please refer to 50 CRF 660.712, .713, .720 and 50 CFR 229.31 for the complete list and text of the regulations.

Q. Am I required to install a Vessel Monitoring System on my boat?

(see § 660.712(d))

Longline vessels that opt to fish for tuna in the adjacent high seas area must have vessel monitoring system units (VMS) on their vessels, provided by and installed by NMFS. Only a VMS unit owned and installed by NMFS complies with this requirement. The vessel must carry the VMS unit after the date scheduled for installation. No fees will be

³ Copies of the Act can be downloaded at: <http://www.nmfs.noaa.gov/sfa/hms/hmsdocuments.html>. Copies of the Small Entity Compliance Guide Outlining the Regulations to Implement Shark Finning Prohibition Act can be viewed at: <http://swr.nmfs.noaa.gov/pir/cg2.htm>

⁴ Guides for safe handling and release are posted on the SWR website (<http://swr.nmfs.noaa.gov>). Printed versions are available free of charge by contacting Don Petersen at (562) 980-4024.

assessed or other communication charges related to the stated VMS requirements. Refer to the final regulations for specific details on the installation, maintenance, and reporting requirements for VMS units.

Q. What are the penalties for the operator or owner of a vessel that doesn't follow these regulations?

Penalties are determined on a case-by-case basis; they can include significant civil penalties and permit sanctions. NOAA intends to develop a civil administrative penalty schedule for the HMS FMP Final Rule, which will be available to the public at: <http://www.gcel.noaa.gov/schedules/index.html>

List of contacts

NMFS Southwest Regional Office, Sustainable Fisheries Division (SFD),
501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4221
Ph.: (562) 980-4040
Fax: (562) 980-4047
website: <http://swr.nmfs.noaa.gov>

Craig Heberer, Fisheries Biologist, HMS FMP lead
Ph.: (562) 980-4034
email: Craig.Heberer@noaa.gov

NMFS Northwest Regional Office,
7600 Sand Point Way NE, Seattle, WA 98115-0070
Ph: (206) 526-6150
Fax: (206) 526-
website: <http://www.nwr.noaa.gov/>

Groundfish Conservation Closed Areas:
<http://www.nwr.noaa.gov/1sustfsh/groundfish/gConservAreas/>

**NOAA Fisheries Office of Law Enforcement 24-hour toll-free hotline:
(800) 853-1964**

NOAA Southwest Region Office of Law Enforcement
501 W. Ocean Blvd., Suite 4400-A, Long Beach, CA 90802-4221
Ph.: (562) 980-4050
Fax: (562) 980-4058
website: <http://swr.nmfs.noaa.gov/enf/index.html>

Office of Law Enforcement Field Office contacts:

Arcata, CA (707) 826-9247
Pacific Grove, CA (831) 647-4220

Monterey, CA (831) 647-4203
Santa Rosa, CA (707) 575-6070
San Francisco, CA (415) 561-6628
San Diego, CA (619) 557-5494
Astoria, OR (503) 325-5934
Newport, OR (541) 867-0504
Roseburg, OR (541) 957-3388
Coos Bay, OR (541) 267-0767
Bellingham, WA (360) 676-9268
Vancouver, WA (360) 418-4246

Pacific Fishery Management Council, Mr. Kit Dahl,
7700 NE Ambassador Place, Suite 200 Portland, Oregon, 97220-1384
Ph.: (503) 820-2280
Fax: (503) 820-2299
Toll Free: (866) 806-7204
website: <http://www.pcouncil.org/>

California Department of Fish and Game, Mr. Steve Crooke,
4665 Lampson Ave, Ste C, Los Alamitos, CA 90720
Ph: (562) 342-7139
Fax: (562) 342-7195
website: www.dfg.ca.gov
Cal-Tip Poaching hotline (1-888-334-2258)

Oregon Department of Fish and Wildlife, Marine Resources Program, Ms. Jean McCrae,
2040 SE Marine Science Dr., Newport, OR 97365
Ph: (541) 867-4741
Fax: (541) 867-0311
website: <http://www.dfw.state.or.us/>
Wildlife Violations (1-800-452-7888)

Washington Department of Fish and Wildlife, Ms. Michele K. Culver,
Region 6 Office, 48A Devonshire Rd., Montesano, WA 98563-9618
Ph: (360) 249-1211
Fax: (360) 664-0689
Website: www.wdfw.wa.gov
Emergency Hotline (1-800-477-6224)