

locations is available through the Coast Guard Web site at <http://www.uscg.mil>.”

#### § 10.105 [Corrected]

■ 4. On page 48482, in the third column, the last sentence of § 10.105 paragraph (a) is corrected to read as follows: “A list of Regional Examination Center locations is available through the Coast Guard Web site at <http://www.uscg.mil>.”

Dated: September 12, 2006.

**Stefan G. Venckus,**

*Chief, Office of Regulations and Administrative Law, United States Coast Guard.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 060317076-6076-01; I.D. 031606D]

RIN 0648-AU41

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

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

**ACTION:** Temporary rule.

**SUMMARY:** This rule extends an emergency rule that removed the delay in effectiveness for closing the Hawaii-based shallow-set longline fishery as a result of interaction limits for sea turtles. The intended effect of the emergency action is to afford enhanced protection for sea turtles via timely closure of the fishery.

**DATES:** Effective September 19, 2006, through March 19, 2007.

**ADDRESSES:** In accordance with the Endangered Species Act, a Biological Opinion, dated February 23, 2004, was prepared for this fishery, which operates under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). Also, in accordance with the National Environmental Policy Act, an Environmental Impact Statement (EIS) dated March 30, 2001, and a Supplemental Environmental Impact Statement (SEIS) dated March 5, 2004, were prepared for this fishery under the FMP. Copies of the Biological Opinion, EIS and SEIS are available from William L. Robinson, Administrator, Pacific

Islands Region, NMFS, 1601 Kapiolani Blvd. 1110, Honolulu, HI 96814.

**FOR FURTHER INFORMATION CONTACT:** Robert Harman, Pacific Islands Region, NMFS, phone: 808-944-2271.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This **Federal Register** document is accessible via the Internet at the Government Printing Office website at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html).

##### Background

NMFS manages the pelagic longline fishery for swordfish, tunas, and related species in the western Pacific, according to the FMP prepared by the Western Pacific Fishery Management Council (WPFMC) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and at 50 CFR part 665.

The regulations at § 665.33(b)(1) governing western Pacific pelagic fisheries establish maximum annual limits on the numbers of physical interactions that occur between longline fishing gear 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 different turtle species, one for leatherback sea turtles set at 16, and one for loggerhead sea turtles set at 17.

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

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.

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 seven-day delay in effectiveness offered by the advance notice provision was thought to be adequate to provide notice of the fishery closure to vessels at sea. The delay was intended to give NMFS adequate time to notify permit holders and vessel operators of the closure, and to give operators adequate time to cease fishing and begin to return to port, while still affording adequate protection to sea turtles. Fishing activity levels and rates of turtle interactions in early 2006 were, however, higher than expected, resulting in the fishery quickly reaching the limit on turtle interactions. To respond to the recent greater fishing activity and turtle interaction rates, and to prevent additional adverse impacts to turtles, immediate implementation of the fishery closure was facilitated by issuance of the emergency rule that removed the delay in effectiveness in closing the fishery.

Additionally, more effective means of providing notification to fishermen now exist. 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 the fleet of a closure. Currently, however, NMFS observers carry satellite telephones and are placed on all vessels conducting shallow-set fishing trips. This makes immediate and effective communication possible between NMFS and each vessel at sea.

The emergency rule that removed the delay in effectiveness in closing the fishery was published on March 22, 2006 (71 FR 14416), and effective on March 20, 2006. When the 2006 fishery was closed, NMFS notified the operator of each Hawaii-based shallow-set longline vessel, directly via the communication devices available to the NMFS observer placed on the vessel. This allowed for immediate closure of the fishery, and the limit on turtle interactions was not exceeded. The shallow-set fishery was closed on March 20, 2006, both by direct notice to vessels, and by **Federal Register** notice on March 24, 2006 (71 FR 14824).

The WPFMC has agreed with the need for the extension for one additional period of not more than 180 days as authorized under section 305(c)(3)(B) of Magnuson-Stevens Act. The WPFMC is currently developing a regulatory amendment to permanently remove the delay in effectiveness. At its 133<sup>rd</sup> meeting in Pago Pago, American Samoa, the WPFMC voted to recommend the modification of the regulations to

remove the delay in effectiveness and close the shallow-set fishery immediately upon reaching either limit on turtle interactions.

This extension of the emergency rule is necessary to provide additional time to develop and implement a permanent change to the regulations that will remove the delay in effectiveness.

**Classification**

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this extension is needed to protect sea turtles until such time as the regulations can be permanently modified to remove the delay in effectiveness in closing the fishery.

This action continues emergency measures implemented March 20, 2006 (71 FR 14416, March 22, 2006), for 180 days. The public was provided with opportunity to submit comment on these measures in the emergency rule published on March 22, 2006. NMFS received public comments supporting closure of the fishery based on documented interactions with sea turtles, and supporting removal of the seven-day delay in effectiveness after notification when closing the fishery, both in the emergency rule, and on a permanent basis. Therefore, the AA finds that it is unnecessary to delay the extension of these measures by providing additional opportunities for public comment, and finds good cause to waive additional public comments under 5 U.S.C. 553(b)(B).

This action extends the current regulatory requirements applicable to the fishery. There are no new requirements with which persons subject to the regulations must come into compliance, and a 30-day delay in effectiveness is unnecessary. For these reasons, the AA finds good cause to waive the 30-day delayed effectiveness provision of the Administrative Procedures Act pursuant to 5 U.S.C. 553(b)(B).

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

**List of Subjects in 50 CFR Part 665**

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian natives, Northern Mariana Islands, Pacific Remote Island Areas, Reporting and recordkeeping requirements.

Dated: September 15, 2006.

**John Oliver,**  
*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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

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

■ 1. The authority citation for part 665 reads as follows:

**Authority:** 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 1531 *et seq.*

■ 2. In § 665.22, add 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)(2), 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)(2), in violation of § 665.33(i).

\* \* \* \* \*

■ 3. In § 665.33, paragraphs (b)(2)(i) and (ii) are suspended and paragraphs (b)(2)(iii) and (iv) are added to read as follows:

**§ 665.33 Western Pacific longline fishing restrictions.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) As soon as practicable, the Regional Administrator will sign the closure notice and provide actual notice via telephone, satellite telephone, radio, electronic mail, facsimile transmission, or post, to all vessel operators and holders of Hawaii longline limited access permits, that the shallow-set component of the longline fishery is 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 on a specified date and time, and that all such fishing gear must be immediately removed from the water and the fishing trip terminated. As soon as practicable, the Regional Administrator will also file for publication at the Office of the **Federal Register** the notification that the sea turtle interaction limit has been reached. The notification will indicate that the Hawaii-based shallow-set component of the longline fishery is closed, and shallow-set longline fishing north of the equator by vessels registered for use under Hawaii longline limited access permits was prohibited beginning on the specified date and time when notice was provided, until the end of the calendar year in which the sea turtle interaction limit was reached.

(iv) Beginning on the fishery closure date and time indicated by the Regional Administrator in the notification provided to vessel operators and permit holders and published in the **Federal Register** under paragraph (b)(2)(iii) 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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