

§ 648.51 Gear and crew restrictions.

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- (a) * * *
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- (2) * * *

(ii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings running parallel to the long axis of the net.

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■ 3. In § 648.80, paragraph (f)(2) is revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

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- (f) * * *

(2) *All other nets.* With the exception of gillnets, mesh size is measured by a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater, than 120 mm (4.72 inches).

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■ 4. In § 648.104, paragraph (a)(2) is revised to read as follows:

§ 648.104 Gear restrictions.

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- (a) * * *

(2) Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated

portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 665**

[Docket No. 061227341-7031-02; I.D. 120406A]

RIN 0648-AU99

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

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to 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 final rule allows for an immediate closure of the fishery to enhance protection for sea turtles.

DATES: This final rule is effective March 28, 2007.

ADDRESSES: Copies of this final rule, the regulatory amendment, environmental assessment, regulatory impact review, and regulatory flexibility analyses may be obtained from William L. Robinson, Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700.

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: <http://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 Western Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens 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) set the maximum allowable annual limits on the numbers of interactions between longline fishing operations and sea turtles. These limits apply to physical interactions with fishing gear deployed from vessels registered under Hawaii longline limited-access permits while engaged in shallow-set longline fishing, i.e., fishing that is directed at swordfish. 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.

Pursuant to a Section 7 consultation under the Endangered Species Act, NMFS is required by a 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 7 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 immediately notifying vessels at sea of a closure. More effective means of providing immediate notification to active

fishermen now exist; NMFS observers carry satellite telephones that enable effective communications between NMFS and each shallow-set longline 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, an emergency rule was issued that suspended the 7-day delay in effectiveness when closing the fishery; the emergency rule was effective on March 20, 2006 (71 FR 14416, March 22, 2006). NMFS published a notification closing the 2006 shallow-set fishery from March 20, 2006, through December 31, 2006 (71 FR 14824, March 24, 2006). When the fishery was closed, NMFS also 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. NMFS subsequently published a document extending the emergency rule that suspended the advance notice provision until March 19, 2007 (71 FR 54769, September 19, 2006).

The intent of the final rule is to enhance the protection for sea turtles through the permanent removal of the 7-day delay in effectiveness when closing the Hawaii-based shallow-set longline fishery as a result of reaching turtle interaction limits.

Additional background information on this final rule may be found in the preamble to the proposed rule published on January 16, 2007 (72 FR 1700), and is not repeated here.

Comments and Responses

On January 16, 2007, NMFS published a notice of the proposed rule (72 FR 1700). The public comment period for the notice ended on January 31, 2007. NMFS received 1,038 comments from the public; nearly all were identical form letters received via email. All of the public comments supported this action, and some commenters provided additional remarks on the proposed rule. NMFS responds to those additional comments that are relative to this action, as follows:

Comment 1: The longline fishery should be closed permanently to protect sea turtles.

Response: NMFS and the Council believe that a well-managed and

economically-viable fishery, with the proper mechanisms in place to protect threatened and endangered species, can coexist with sea turtles. Thus, a permanent closure of the shallow-set swordfish fishery was not a management alternative considered by the Council or NMFS at this time.

Comment 2: The management alternative, discussed by the Council but not recommended to NMFS for rulemaking, that should have been chosen would establish short-term time and/or area closures for the shallow-set fishery designed to provide protection for sea turtles beyond measures already in place.

Response: Although the Council did not recommend this alternative for rulemaking, NMFS agrees that well-defined time and area management measures would also meet the purpose and need for this action. 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 are not preferred at this time. To design and implement such measures, additional information is needed about sea turtle migration and foraging behavior, and the nature of interactions between fishing gear and sea turtles. The Council and NMFS may revisit such management alternatives in the future, if needed and practicable.

Comment 3: NMFS should improve the collection of information about sea turtle interactions in the fishery, and provide this information more quickly to the fishing community and interested public, including regular updates to PIRO's turtle interaction web page. NMFS PIRO and NMFS Southwest Regional Office (SWRO) should also coordinate their management efforts for shared resources, including sea turtles.

Response: Advances in communication systems allow for more effective and near real-time transfer of information about the interactions between turtles and fishing operations. Indeed, PIRO's public web site is updated twice monthly, or when a turtle interaction is documented, with the goal of keeping the regulated fishing industry and the general public apprised of developments. For the management of shared resources, NMFS PIRO and SWRO maintain close communication, and work together in the development of collaborative research, protection strategies, and management measures.

Changes to the Proposed Rule

No changes to the proposed rule were made in this final rule.

Classification

The NOAA Assistant Administrator for Fisheries (AA) determined that this FMP amendment is necessary for the conservation and management of the affected fisheries, and that the action is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

An Environmental Assessment (EA) was prepared for this action, and the AA concluded that there will be no significant impact on the human environment as a result of this rule. NMFS determined that the preferred management alternative has the greatest likelihood of achieving the purpose and need for this Federal action. In addition, all beneficial and adverse impacts of this action have been addressed to reach the conclusion of no significant impact. A copy of the EA is available from William L. Robinson (see **ADDRESSES**).

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

Consistent with section 604 of the Regulatory Flexibility Act, NMFS prepared a final regulatory flexibility analysis (FRFA) for the regulatory amendment, as described below.

NMFS prepared this FRFA for the final rule. This FRFA incorporates the initial regulatory flexibility analysis (IRFA). The Classification section in the proposed rule included a detailed summary of the analysis contained in the IRFA, and that discussion is not repeated in its entirety here. The need for and the objectives of the action are explained in the preambles to the proposed rule and final rule and are not repeated here. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 665. No comments were received on the IRFA or on the economic impacts of the proposed rule.

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

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 (shifting the shallow-set fishing season) and 4 (limited time/area closures) 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. Also, to design and implement such measures as identified in Alternative 4, additional information is needed about sea turtle migration and foraging behavior, and the nature of interactions between fishing gear and sea turtles.

There are no recordkeeping or reporting requirements associated with this final rule.

Small Business Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. The guide will be sent to all holders of permits for the Hawaii-based longline fishery. Copies of the small

business compliance guide are available from the William L. Robinson (see **ADDRESSES**) and are also available at the NMFS PIRO web site <http://www.fpir.noaa.gov>.

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: February 20, 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 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).

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■ 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.

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(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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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045-6045-01; I.D. 022007D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 ft (18.3 m) LOA and Longer Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 ft (18.3 meters (m)) length overall (LOA) and longer using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2007 Pacific cod total allowable catch (TAC) allocated to catcher vessels using hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 21, 2007, through 2400 hrs, A.l.t., June 10, 2007.