

percent by weight of the combined weight of all CPS on board the vessel.

#### Classification

This action is required by 50 CFR 660.509 and is exempt from review under Executive Order 12866.

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

Dated: February 14, 2001.

**Bruce C. Morehead,**

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

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BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 000822244-01; I.D. 082100B]

RIN 0648-AO66

#### Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Area Closure

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

**ACTION:** Emergency interim rule; extension of expiration date.

**SUMMARY:** This action extends an emergency interim rule, now in effect, governing the Hawaii-based pelagic longline fishery. The rule closes certain waters to fishing; imposes fishing gear, landing and transshipment restrictions, effort limitations, and fish sale restrictions; and requires increased observer coverage for the fishery. By extending the emergency interim rule that is effective through February 21, 2001, NMFS continues implementation of an order issued by the U.S. District Court for the District of Hawaii while an environmental impact statement (EIS) is being completed for the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP).

**DATES:** This emergency interim rule is effective from February 22, 2001, through August 20, 2001.

**ADDRESSES:** Copies of the environmental assessment prepared for the emergency interim rule may be obtained from Dr. Charles Karnella, Administrator, Pacific Islands Area Office (PIAO), NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI, 96814-4700.

**FOR FURTHER INFORMATION CONTACT:** Alvin Katekaru, PIAO, 808-973-2937.

**SUPPLEMENTARY INFORMATION:** On August 4, 2000, the U.S. District Court for the District of Hawaii, in the case *Center for Marine Conservation v. NMFS*, issued an Order Further Modifying Provisions of Order of Injunction that was implemented by NMFS by an emergency interim rule promulgated on August 25, 2000 (65 FR 51992, August 25, 2000). As intended by the order, the emergency interim rule reduces adverse impacts to sea turtles by the Hawaii-based longline fishery while NMFS prepares an EIS that analyzes the environmental effects of fishing activities conducted under the FMP. The EIS is scheduled for completion by April 1, 2001.

The emergency interim rule, which was revised on November 3, 2000 (65 FR 66186, November 3, 2000), prohibits vessels registered for use with Hawaii longline limited access permits from fishing activities throughout the year in waters between 28° N. and 44° N. lat., from 150° W. to 168° W. long. ("Area A"); limits vessels registered for use with Hawaii longline limited access permits to a total of 154 sets from August 10 through December 31, 2000, and a total of 77 sets from January 1 through March 14, 2001, and requires 100-percent observer coverage for these vessels in waters between 28° N. and 44° N. lat., from 137° W. to 150° W. long., and in waters between 28° N. and 44° N. lat., from 168° W. to 173° E. long. (both areas collectively designated "Area B"). The rule also prohibits Hawaii-based longliners operating in waters between 0° lat. (equator) and 28° N. lat., from 137° W. and 173° E. long. ("Area C") from engaging in directed fishing effort for swordfish; requires deployment of longline gear so that the deepest point of the longline between any two floats reaches a depth greater than 100 m (328.1 ft) below the sea surface; requires permit holders or operators to donate to charity at least 30 percent of their gross revenues from the sale of incidentally caught swordfish from Area C; and prohibits longline vessels from possessing lightsticks aboard the vessels if fishing occurs in any portion of Area C.

Further, pursuant to the Court's Order, NMFS provided observer coverage for the Hawaii longline fishery in Area C at a minimum level of 10 percent by September 21, 2000, and increased the level to 20 percent before November 7, 2000. To ensure these levels of coverage, this rule requires any Hawaii-based longline vessel that NMFS has exempted from carrying NMFS-approved observers in Area C for a specific fishing trip to have aboard the vessel a valid observer waiver form

issued by NMFS. For Areas B and C, longline fishing activities are prohibited from March 15 through May 3. During the closure, Pacific pelagic management unit species harvested in Areas B and C (all year in Area A) are prohibited from being landed or transhipped to Hawaii.

This extension of the emergency interim rule implements the Court's order for an additional 180 days until August 20, 2001, unless prior to that expiration date, NMFS completes the environmental impact statement for the FMP and the Court lifts the injunction contained in its Order dated August 4, 2000. Although NMFS has reorganized the sequence of several paragraphs in §§ 660.22 and 660.33(d) and (e), this emergency interim rule is substantively identical to the emergency interim rule published August 25, 2000, as amended by the rule published on November 3, 2000.

Extension of this emergency interim rule is authorized under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

#### Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that extension of the emergency interim rule is necessary to comply with a valid order of the U.S. District Court.

The AA finds for good cause that providing prior notice and opportunity for public comment for this rule is unnecessary given that the Court ordered the specific actions contained in this rule, thus precluding implementation of any alternative, and is impracticable given the Court's deadline. Similarly, the AA finds, for good cause, under 5 U.S.C. 553(d)(3), that delaying the effectiveness of this rule for 30 days is impracticable given the Court's deadline. Accordingly, the AA is making this rule effective from February 22, 2001, through August 20, 2001.

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

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

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

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

Dated: February 20, 2001.

**Clarence G. Pautzke,**

*Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

**PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC**

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

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

2. In § 660.22, paragraphs (z), (aa), and (bb) are suspended, and new paragraphs (ee) through (ll) are added to read as follows:

**§ 660.22 Prohibitions.**

\* \* \* \* \*

(ee) Fish for Pacific pelagic management unit species with a vessel registered for use under a Hawaii longline limited access permit using longline gear within the Hawaii emergency closed areas in violation of § 660.33(b)(1), (c)(1), (c)(4), (c)(5), or (d)(1).

(ff) Use a receiving vessel registered for use under a receiving vessel permit to receive from another vessel Pacific pelagic management unit species harvested with longline gear, if the fish were harvested or the transfer occurs within the Hawaii emergency closed areas in violation of § 660.33(b)(2), (c)(2), or (d)(2).

(gg) Land or transship shoreward of the outer boundary of the EEZ around Hawaii Pacific pelagic management unit species that were harvested with longline gear within the Hawaii emergency closed areas in violation of § 660.33(b)(3), (c)(3), or (d)(3).

(hh) Land or sell swordfish (*Xiphias gladius*) caught by longline gear within the Hawaii emergency longline closed Area C in violation of § 660.33(d)(5).

(ii) Use longline gear to fish for Pacific pelagic management unit species in Hawaii emergency longline closed Area B or Area C without a NMFS-approved observer on board the vessel in violation of § 660.33(e)(1) or (e)(2).

(jj) Possess light sticks on a longline vessel within the Hawaii emergency longline closed Area C in violation of § 660.33(d)(6).

(kk) Fail to carry onboard the vessel or to make available for inspection by an authorized officer an observer waiver form issued by the Administrator, Pacific Islands Area Office, NMFS, or a designee of the Administrator as required under § 660.33(e)(2).

(ll) Direct longline fishing effort toward the harvest of swordfish in

Hawaii emergency longline closed Area C.

3. In § 660.23, paragraph (a) is suspended and new paragraph (c) is added to read as follows:

**§ 660.23 Notifications.**

\* \* \* \* \*

(c) The permit holder of a vessel registered for use with a Hawaii longline limited access permit or with an agent designated by the permit holder shall provide notice to the Regional Administrator at least 72 hours (not including weekends and holidays) before the vessel leaves port on a fishing trip, any part of which occurs in Area B or Area C, as described in § 660.33(a)(2) or (a)(3). The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder. The notice must be provided to the telephone number designated by the Regional Administrator. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of and telephone number of the agent designated by the permit holder to be available between 8:00 a.m. to 5 p.m. (Hawaii time) on weekdays for NMFS to contact in order to arrange observer placement.

**§ 660.28 [Amended]**

4. In § 660.28, paragraph (c) is suspended.

5. New § 660.33 is added to subpart C to read as follows:

**§ 660.33 Hawaii emergency closure.**

(a) *Longline fishing restricted areas.*

(1) "Area A", as used in this section, is defined as all waters bounded on the south by 28° N. lat., on the north by 44° N. lat., on the east by 150° W. long., and on the west by 168° W. long. (see Figure 2 to this section).

(2) "Area B", as used in this section, is defined as all waters bounded on the south by 28° N. lat., on the north by 44° N. lat., on the east by 137° W. long., and on the west by 150° W. long; and all waters bounded on the south by 28° N. lat., on the north by 44° N. lat., on the east by 168° W. long., and on the west by 173° E. long. (see Figure 2 to this section).

(3) "Area C", as used in this section, is defined as all waters bounded on the south by 0° latitude, on the north by 28° N. lat., on the east by 137° W. long., and on the west by 173° E. long. (see Figure 2 to this section).

(b) *Longline fishing restrictions in Area A.* (1) A vessel registered for use under a Hawaii longline limited access

permit may not use longline gear to fish for Pacific pelagic management unit species in Area A.

(2) A vessel registered for use under a receiving vessel permit may not receive from another vessel Pacific pelagic management unit species in Area A.

(3) A vessel registered for use under a Hawaii longline limited access permit or receiving vessel permit may not land or transship Pacific pelagic management unit species that were harvested with longline gear in Area A shoreward of the outer boundary of the EEZ surrounding Hawaii.

(c) *Longline fishing restrictions in Area B.* (1) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear to fish for Pacific pelagic management unit species in Area B from March 15 through May 31.

(2) A vessel registered for use under a receiving vessel permit may not receive from another vessel Pacific pelagic management unit species in Area B from March 15 through May 31.

(3) A vessel registered for use under a Hawaii longline limited access permit or receiving vessel permit may not land or transship Pacific pelagic management unit species that were harvested with longline gear in Area B shoreward of the outer boundary of the EEZ surrounding Hawaii.

(4) From August 7 through December 31, 2000, the number of longline sets allowed in Area B is limited to a total of 154 sets.

(5) From January 1 through March 14, 2001, the number of longline sets allowed in Area B is limited to 77 sets.

(6) Between August 7 through December 31, 2000, the Regional Administrator shall prohibit the use of longline gear to fish for Pacific pelagic management unit species on the date and time that an estimated 154 longline sets will have been made in Area B.

(7) Between January 1 through March 14, 2001, the Regional Administrator shall prohibit the use of longline gear to fish for Pacific pelagic management unit species on the date and time that an estimated 77 longline sets will have been made in Area B.

(8) The Regional Administrator shall determine on the basis of available data when the maximum number of sets will be reached in Area B.

(9) The Regional Administrator will notify each permit holder and each operator of vessels fishing in Area B when further use of longline gear to fish for Pacific pelagic management unit species in Area B is prohibited.

(10) At least 24 hours advance notice will be given of the effective date and

time after which the use of longline gear to fish for Pacific pelagic management unit species in Area B is prohibited, as prescribed in paragraph (b)(9) of this section.

(d) *Longline fishing restrictions in Area C.* (1) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear to fish for Pacific pelagic management unit species in Area C from March 15 through May 31.

(2) A vessel registered for use under a receiving vessel permit may not receive from another vessel Pacific pelagic management unit species in Area C from March 15 through May 31.

(3) Landing or transshipping Pacific pelagic management unit species, that were harvested with longline gear in Area C from March 15 through May 31, shoreward of the outer boundary of the EEZ surrounding Hawaii is prohibited.

(4) For the purpose of this section, "charity" means an entity to which a taxpayer can contribute and deduct the value of any such contribution from taxable income as a "charitable contribution" as defined by the Internal Revenue Code at 26 U.S.C. § 170(c).

(5) Within 30 days of each landing of swordfish caught by longline gear in Area C, the permit holder or operator of a vessel registered for use under a Hawaii longline limited access permit must donate to charity at least 30 percent of the total proceeds from the sale of such swordfish.

(6) A vessel registered for use under a Hawaii longline limited access permit may not possess lightsticks during a fishing trip where part (or all) of the trip involves fishing in Area C.

(7) Any longline gear deployed after November 3, 2000, by a vessel registered for use under a Hawaii longline limited access permit that fishing for Pacific pelagic management unit species in Area C, 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.

(e) *Emergency closure at-sea observer coverage.* (1) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear to fish for Pacific pelagic management unit species in Area B without a NMFS-approved observer aboard the vessel.

(2) A vessel registered for use under a Hawaii longline limited access permit may not use longline gear in Area C without a NMFS-approved observer aboard the vessel, unless it is issued a written waiver on a per trip basis by the Administrator, Pacific Islands Area Office, NMFS, or a designee. The waiver must be on board the vessel and make available for inspection by an authorized office any time during the trip for which the waiver is valid.

(3) The Regional Administrator may assign NMFS-approved observers to

vessels registered for use under Hawaii longline permits:

(i) Based on notice provided by the permit holder or by an agent designated by the permit holder to the Regional Administrator according under § 660.23(c), or,

(ii) According to a list containing vessel names randomly ordered by the Regional Administrator.

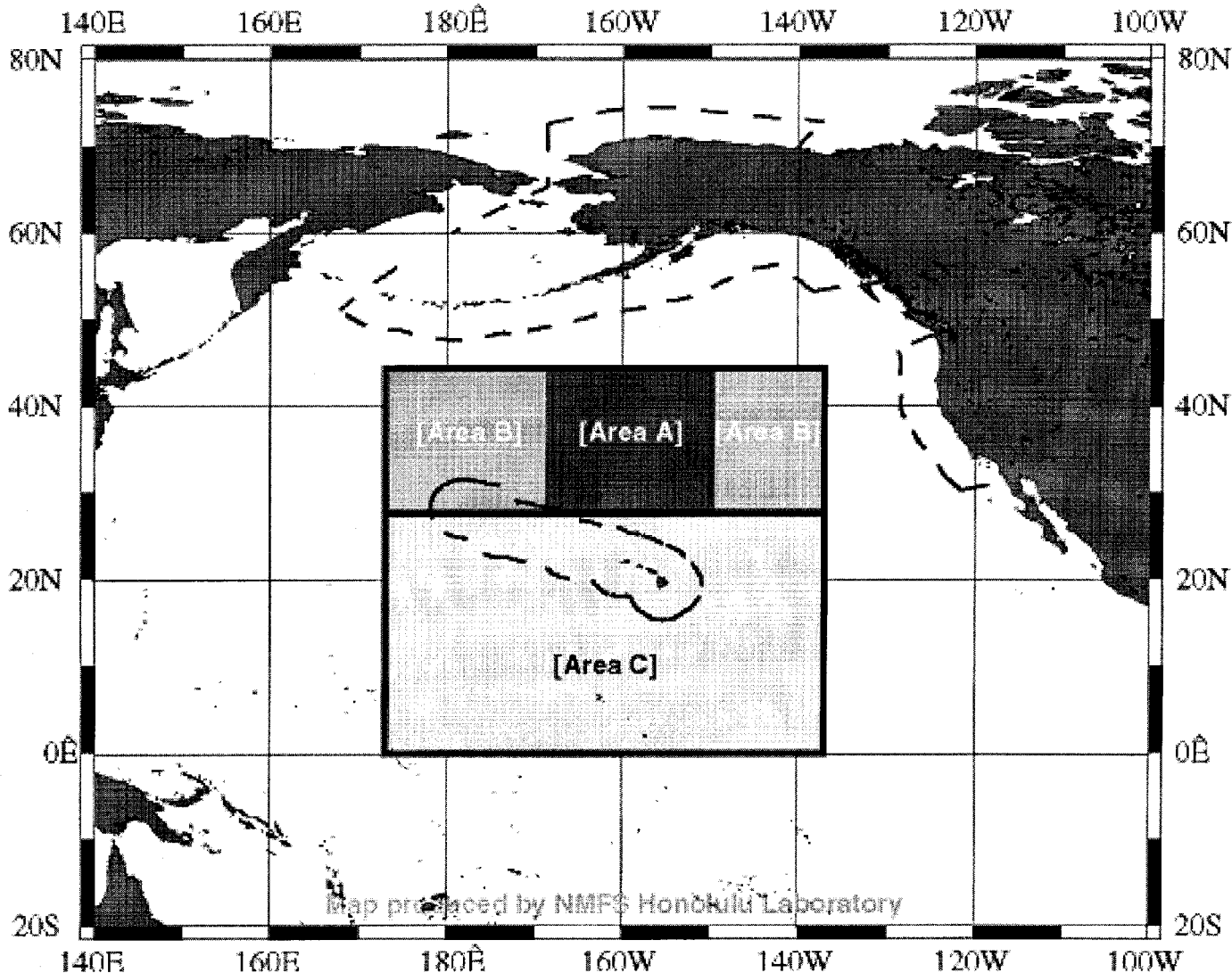
(4) When NMFS notifies the permit holder or the designated agent of the obligation to carry an observer as required under this section, the vessel may not engage in the fishery without taking the observer.

(5) An operator of a vessel registered for use under a Hawaii longline limited access permit must immediately terminate longline fishing in Area C while at sea upon notification by the Regional Administrator that the level of observer coverage is below the 10 percent or 20 percent level of observer coverage established by NMFS.

(6) An operator of a vessel registered for use under a Hawaii longline limited access permit that has been notified by the Regional Administrator as described in paragraph (e)(5) of this section is prohibited from using longline gear in Area C for the remainder of the trip, unless notified by the Regional Administrator that the prohibition has been removed for the vessel.

**BILLING CODE 3510-22-S**

FIGURE 2 TO § 660.33—LONGLINE FISHING RESTRICTED AREAS

**Court-ordered Closures 8/03/2000**

Area A: 44 North - 28 North, 168 West - 150 West

Area B: 44 North - 28 North, 173 East - 168 West and 150 West - 137 West

Area C: 28 North - Equator (0 North), 173 East - 137 West

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 010112013-1013-01; I.D. 021601A]

**Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish by Vessels Using Non-pelagic Trawl Gear in the Red King Crab Savings Subarea**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing directed fishing for groundfish with non-pelagic trawl gear in the red king crab savings subarea (RKCSS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the 2001 red king crab bycatch limit specified for the RKCSS.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 18, 2001, until 2400 hrs, A.l.t., December 31, 2001.