

community's first local aural transmission service and modify Station WYGY(FM)'s license to reflect the change. See 66 FR 33657 (June 25, 2001). Channel 247A can be reallocated from Lebanon to Fort Thomas at petitioner's requested site 14.7 kilometers (9.1 miles) north of Fort Thomas. Channel 243B can be reallocated from Hamilton to Lebanon at Station WYGY(FM)'s existing site 13.9 kilometers (8.6 miles) southwest of the community. Coordinates for Channel 247A at Fort Thomas, Kentucky, are 39-11-51 NL and 84-22-56 WL. Coordinates for Channel 243B at Lebanon, Ohio, are 39-21-11 NL and 84-19-30 WL.

**DATES:** Effective December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket Nos. 01-118, 01-119, and 01-122, adopted November 7, 2001, and released November 16, 2001. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

##### **§ 73.202 [Amended].**

2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by removing Channel 230A at Van Wert adding Columbus Grove, Channel 230B1, and by removing Channel 247A and adding Channel 243B at Lebanon.

3. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 264A at Grants, adding Milan, Channel 264C0, and removing Channel 265C1 and adding Channel 299C1 at Shiprock.

4. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Fort Thomas, Channel 247A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01-30388 Filed 12-7-01; 8:45 am]

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 010511123-1123-01; I.D. 042001D]

RIN 0648-AP24

#### Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Restrictions and Seasonal Area Closure, and Sea Turtle and Sea Bird Mitigation Measures

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

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

**SUMMARY:** This action extends an emergency interim rule, now in effect, applicable to vessels registered for use under a Hawaii longline limited access permit (Hawaii longline vessels) and allows the use of basket-style longline gear as an alternative method for deep-set tuna longline fishing. This emergency interim rule: Prohibits the targeting of swordfish north of the equator by Hawaii longline vessels; prohibits longline fishing by Hawaii longline vessels in waters south of the Hawaiian Islands (from 15° N. lat. to the equator, and from 145° W. long. to 180° long.) during the months of April and May; allows re-registration of vessels to Hawaii longline limited access permits only in October; imposes additional sea turtle handling and resuscitation measures; and requires all Hawaii longline vessel operators to attend an annual protected species workshop. This emergency interim rule implements an order issued by the U.S. District Court for the District of Hawaii (Court) in March 2001 to reduce the number of sea turtles injured and killed incidental to longline fishing operations. Other parts of this emergency interim rule implement the terms and conditions contained in an amended November 2000 biological opinion issued by the U.S. Fish and

Wildlife Service (FWS) on the effects of the Hawaii longline fleet on the endangered short-tailed albatross. In October 2001, FWS amended its biological opinion on the short-tailed albatross allowing Hawaii longline vessels to use basket-style longline gear as an alternative method for deep-set tuna longline fishing, which is implemented by this emergency interim rule.

**DATES:** 1. The expiration date of the emergency interim rule published on June 12, 2001 (66 FR 31564), is extended to June 8, 2002.

2. The amendments to §§ 660.12, 660.35 (a)(7), and (a)(10) in this emergency interim rule are effective from December 11, 2001, through June 8, 2002.

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

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

**SUPPLEMENTARY INFORMATION:** On June 12, 2001, NMFS issued an emergency interim rule (66 FR 31561) implementing temporary measures for the Hawaii-based pelagic longline fishery (Hawaii longline fishery) to avoid the likelihood of jeopardy to sea turtles and to reduce adverse effects to the short-tailed albatross. These measures are consistent with NMFS' March 29, 2001, Biological Opinion on the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region and FWS' November 28, 2000, Biological Opinion on the Effects of the Hawaii-based Domestic Longline Fleet on the Short-tailed Albatross (*Phoebastria albatrus*) (short-tailed albatross BiOp). NMFS received no written comments on the June 12, 2001, emergency interim rule.

The action taken to protect and conserve sea turtles complies with a March 30, 2001, Order Modifying Injunction (Order) issued by the Court in *Center for Marine Conservation v. NMFS*, CV No. 99-00152. This emergency interim rule codifies that Order in 50 CFR part 660 under the authority of section 305 (c) of the Magnuson-Stevenson Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855 (c). Background information on the Order was published in several previous

**Federal Register** documents (64 FR 72290, December 27, 1999; 65 FR 16346, March 28, 2000; 65 FR 37917, June 19, 2000; 65 FR 51992, August 25, 2000; 65 FR 66186, November 3, 2000; 66 FR 1110, February 22, 2001; and at 66 FR 15358, March 19, 2001; 66 FR 31561, June 12, 2001) and is not repeated here.

The turtle component of this emergency interim rule (a) prohibits Hawaii longline vessels from using longline gear to target swordfish north of the equator; (b) requires Hawaii longline vessels to deploy longline gear such that the "sag" (deepest point) between any two floats is at least 100 m (328.1 ft) beneath the sea surface and the float line suspending the main longline beneath a float is at least 20 m (65.6 ft) long, with a minimum of 15 branch lines deployed between any 2 floats; (c) prohibits a Hawaii longline vessel from possessing light sticks on board the vessel; (d) prohibits Hawaii longline vessels from fishing with longline gear during the months of May and April in the area bounded on the south by the equator, on the west by 180° long., on the east by 145° W. long., and on the north by 15° N. lat.; (e) allows the re-registration of a Hawaii longline vessel that has been de-registered from a Hawaii longline limited access permit after March 29, 2001, only during the month of October; (f) requires operators of Hawaii longline vessels to annually attend a protected species workshop conducted by NMFS; (g) requires Hawaii longline vessel operators to cease gear retrieval if a sea turtle is discovered hooked or entangled on a longline until the turtle has been removed from the gear or brought onto the vessel's deck; (h) requires that hooks be removed from sea turtles as quickly and carefully as possible; however, if a hook cannot be removed, that the line be cut as close to the hook as possible; (i) requires that wire or bolt cutters capable of cutting through a longline hook be on board the vessel to facilitate cutting of hooks imbedded in sea turtles; and (j) requires the operator of a Hawaii longline vessel to bring comatose sea turtles on board the vessel and to perform resuscitation on such turtles as prescribed in 50 CFR 223.206 (d)(1).

The seabird protection component of this emergency interim rule implements the terms and conditions of the short-tailed albatross BiOp, as amended. This biological opinion requires operators and crew of Hawaii longline vessels operating with longline gear north of 23° N. lat. to (1) use thawed blue-dyed bait in a manner specified by NMFS and discard offal strategically to distract sea birds during the setting and hauling of

longline gear; and (2) to employ a line-setting machine or basket-style longline gear (as discussed below) with weights (minimum weight = 45 g) attached to each branch line within 1 m of the hook when making tuna target sets (the only type of set allowed under this emergency interim rule north of the equator). Also, the crew of a Hawaii longline vessel is required to apply certain sea bird handling techniques to increase the likelihood of survival of any short-tailed albatross that is incidentally taken and brought on board the vessel alive. If a short-tailed albatross is brought aboard a Hawaii longline vessel, the vessel operator must determine if it exhibits the following traits: Head is held erect and the bird responds to noise and motion stimuli; bird breathes without noise; both wings can flap and retract to normal folded position on back; and the bird can stand on both feet with toes pointed forward. If a short-tailed albatross fails to exhibit even one of these traits, the vessel operator must contact NMFS immediately. In addition, any short-tailed albatross recovered dead must be frozen immediately and surrendered as soon as possible to NMFS.

This emergency interim rule implements an amendment to the short-tailed albatross BiOp issued by FWS on October 18, 2001, in response to NMFS' request of August 15, 2001, to allow basket-style longline gear to be deployed without a line-setting machine north of 23° N. lat. under the terms and conditions of that biological opinion. This gear type is regarded as a traditional rope or tarred longline fishing method in the Hawaii longline fishery. The FWS made this adjustment because this gear type, when it is deployed slack, sinks at approximately 9 m per minute through the first 50 m of the water column, which is comparable to the sink rate of a monofilament longline deployed by a line-setting machine. The FWS determined that the use of basket-style longline gear, like a line-setting machine, minimizes the incidental take of sea birds, including the short-tailed albatross. At present, there is one vessel in the Hawaii longline fishery that uses the basket-style longline gear. Both the Western Pacific Fishery Management Council (Council) and NMFS strongly support the use of basket-style longline gear in the fishery.

The short-tailed albatross BiOp also requires all Hawaii longline vessel operators to attend annually a protected species workshop. The BiOp also contains seabird take mitigation measures for longline fishing targeting swordfish north of 23° N. lat.; however,

these measures become moot because, under this emergency interim rule, targeting swordfish north of the equator is prohibited under the sea turtle take mitigation measures.

#### **Changes From the Original Emergency Interim Rule**

This emergency interim rule contains adjustments to regulatory measures at § 660.12 by adding a definition for "basket-style longline gear," by suspending § 660.35 (a)(7), and by adding § 660.35 (a)(10) that allows the use of basket-style longline gear as an alternative to a line-setting machine or line-shooter (currently required for all Hawaii longline vessels fishing above 23° N. lat.).

Extension of this emergency interim rule is authorized under section 305 (c)(3)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. Background information on other aspects of this emergency interim rule regarding longline sag depth and non-regulatory requirements of the Court Order are presented in the **Federal Register** announcing the emergency interim rule on June 12, 2001 (66 FR 3156). This information is not repeated here.

#### *Recent, Unforeseen Events or Recently Discovered Circumstances*

On October 18, 2001, FWS amended the terms and conditions of its November 2000 short-tailed albatross BiOp to allow the use of basket-style longline gear in the Hawaii longline fishery. This amendment is based on information provided by NMFS demonstrating that this method of deep-set longline fishing is an acceptable alternative to monofilament longline deployed with a line-setting machine in minimizing sea bird take. This gear, when deployed slack, has a sinking rate such that birds diving on the bait are unable to get the bait or become hooked or entangled in the gear. At present there is one Hawaii longline vessel that uses basket-style longline gear. While using this gear, this vessel has not observed or reported any sea turtle interactions. Both the Council and NMFS believe that this vessel should be allowed to continue using this method of fishing. Therefore, this emergency interim rule includes the basket-style longline gear as an alternative to line-setting machine or line shooter currently required of all Hawaii longline vessels targeting tuna north of 23° N. lat. around the Hawaiian Islands.

#### **Classification**

The Assistant Administrator for Fisheries, NOAA (AA) has determined

that extension of the emergency interim rule is necessary to comply with a U.S. District Court Order and the mandatory terms and conditions of a BiOp issued under section 7 of the Endangered Species Act.

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

The AA finds for good cause that providing prior notice and opportunity for public comment is unnecessary because this action implements a Court Order and mandatory terms and conditions of a BiOp, authorized under the ESA, thus precluding implementation of any alternative. 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 explicit directive from the Court and the mandatory requirements of the FWS's BiOp. Further, the AA finds, under 5 U.S.C. 553 (d)(1), that this rule relieves a restriction by allowing the use of a longline gear type that was previously prohibited above 23° N. lat. Accordingly, the AA is making this emergency interim rule effective from

December 11, 2001, through June 8, 2002.

**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.

Dated: December 3, 2001.

**Rebecca Lent,**  
*Deputy Assistant Administrator for Regulatory Programs, 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. Effective from December 11, 2001, through June 8, 2002, in § 660.12, a definition for “Basket-style longline gear” is added in alphabetical order to read as follows:

**§ 660.12 Definitions.**

\* \* \* \* \*

*Basket-style longline gear* means a type of longline gear that is divided into units called “baskets” each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

\* \* \* \* \*

3. Effective from December 11, 2001, through June 8, 2002, in § 660.35, paragraph (a)(7) is suspended and a new paragraph (a)(10) is added to read as follows:

**§ 660.35 Seabird take mitigation measures.**

(a) \* \* \*

(10) Use a line-setting machine or line-shooter to set the main longline, or use basket-style longline gear such that the main longline is deployed slack to maximize its sinking rate;

\* \* \* \* \*

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