

since November 21, 2001, is removed, and any landing of Pacific mackerel may consist of 100 percent Pacific mackerel. This action is taken to help ensure that the harvest guideline is attained, but not exceeded.

**DATES:** Effective at 12 midnight l.t. March 31, 2002, through 12 midnight l.t. June 30, 2002.

**ADDRESSES:** The data used as the basis for this action is available for public inspection at the Office of the Acting Regional Administrator, Rodney R. McInnis, Southwest Region (Regional Administrator), NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:**

James J. Morgan, Southwest Region, NMFS, (562) 980-4036.

**SUPPLEMENTARY INFORMATION:** On July 25, 2001, NMFS announced a harvest guideline of 13,837 metric tons (mt) for Pacific mackerel for the fishing season July 1, 2001, through June 30, 2002 (66 FR 38571). A directed fishery of 6,000 mt was established, which, when attained, would be followed by an incidental catch allowance of 45 percent of Pacific mackerel in a landing of any coastal pelagic species. If a significant amount of the harvest guideline remained unused before the end of the fishing season on June 30, 2002, the directed fishery would be reopened. This approach was taken because of concern about the low harvest guideline's potential negative effect on the harvest of Pacific sardine if the fishery for Pacific mackerel had to be closed. The two species occur together often and could present bycatch problems.

On November 8, 2001, 6,079 mt of Pacific mackerel had been landed; therefore, the 45 percent incidental rate was implemented on November 21, 2001 (66 FR 54166, November 27, 2001). On March 5, 2002, 7,252 mt of Pacific mackerel had been landed, with 6,585 mt of the harvest guideline remaining. To help ensure that the harvest guideline will be achieved, beginning on April 1, 2002, the 45 percent incidental landing restriction will be removed. If the harvest guideline of 13,837 mt is projected to be reached before June 30, 2002, the directed fishery will be closed and an appropriate incidental landing restriction imposed.

For the reasons stated here and in accordance with the FMP and its implementing regulations at 50 CFR 660.509, the directed fishery for Pacific mackerel will be reopened at 12 midnight l.t. on March 31, 2002, after which time any landing of Pacific

mackerel may consist of 100 percent Pacific mackerel.

**Classification**

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

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide opportunity for prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B), as providing prior notice and opportunity for comment would be impracticable and unnecessary. It is impracticable because the fishery must be opened immediately in order to achieve the harvest guideline. It is unnecessary because this is a minor inseason action and the public had an opportunity to comment on the process that established the season openings and closings.

Since this action will give Pacific mackerel fishermen an opportunity to land the remaining harvest guideline, it relieves a restriction under 5 U.S.C. 553(d)(1).

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

Dated: April 1, 2002.

**John H. Dunnigan,**

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

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 010511123-2076-02; I.D. 031102C]**

**RIN 0648-AP84**

**Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagics Fisheries; Hawaii-based Pelagic Longline Restrictions**

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

**ACTION:** Emergency interim rule; notification of restrictions; request for comments.

**SUMMARY:** NMFS issues an emergency interim rule applicable to any vessel registered for use under a Hawaii longline limited access permit (Hawaii longline vessel). This rule prohibits longline fishing north of 26° N. lat. and the retention or landing of more than 10 swordfish per trip by Hawaii longline

vessels that fish north of the equator. This interim emergency rule is intended to prevent additional takings of loggerhead sea turtles.

**DATES:** This emergency interim rule is effective April 5, 2002, through June 8, 2002. Comments must be received no later than 5 p.m., Hawaiian standard time, on May 20, 2002.

**ADDRESSES:** Written comments on this action must be mailed to Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI, 96814-4700; or faxed to 808-973-2941. Comments will not be accepted if submitted via e-mail or the Internet. Copies of an Environmental Assessment and Regulatory Impact Review (RIR) prepared for this action may be obtained from Dr. Charles Karnella, PIAO. See also <http://swr.nmfs.noaa.gov> to view the Final Environmental Impact Statement (FEIS) on the implementation of the Fishery Management Plan for Pelagic Fisheries of the Western Pacific (FMP).

**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 reduce adverse effects to the short-tailed albatross. Those measures are consistent with NMFS' March 29, 2001, biological opinion (BiOp) on the FMP and with the U.S. Fish and Wildlife Service's November 28, 2000, BiOp on the Effects of the Hawaii-based Domestic Longline Fleet on the Short-tailed Albatross (*Phoebastria albatrus*). The consultations culminating in the two BiOps have been reinitiated and are expected to be completed by July 2002. The June 12, 2001, emergency interim rule was extended for 180 days on December 10, 2001 (66 FR 63630). The actions taken to protect sea turtles comply with a March 30, 2001, Order Modifying Injunction (Court Order) issued by the Court in *Center for Marine Conservation v. NMFS* CV No. 99-00152. Specific information on the protective measures in the BiOps and background information on the Court Order were published in several **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; 66 FR 31561, June 12, 2001; and 66 FR 63631, December 10, 2001), and that information is not

repeated here. NMFS anticipates that separate final rules implementing the protective measures of the BiOps for the Short-tailed albatross and for sea turtles will be in place before the expiration of the June 12, 2001, emergency interim rule on June 9, 2002.

This emergency interim rule prohibits Hawaii longline vessels from fishing north of 26° N. lat., and from retaining or landing more than 10 swordfish per fishing trip, if any fishing during the trip occurred north of the equator. The 10-swordfish trip limit is intended to ensure that swordfish are not the target of fishing operations, as required by the June 12, 2001, emergency interim rule.

Although no loggerhead turtles were observed taken in the Hawaii longline fishery from April 1 through December 31, 2001, recently, three incidental takes of loggerhead turtles were reported by NMFS observers on Hawaii longline vessels during fishing operations north of 30° N. lat. One of these takes resulted in the death of the turtle. In addition, a leatherback turtle was reportedly taken and released alive on one of the trips during which a loggerhead turtle was taken. This level of observed takes indicates, through simple extrapolation, that the level specified in the incidental take statement for loggerhead turtles issued with NMFS' March 29, 2001, BiOp has been exceeded. Additionally, several vessels fishing north of 30° N. lat. have returned with moderate to large numbers of swordfish. Before these vessels began fishing in these northern waters (approximately north of 25°–26° N. lat.), there had been no report of a take of a loggerhead turtle since the March 30, 2001, Court Order was issued.

Observer data show that nearly all of the takes of loggerhead turtles incidental to Hawaii longline fishing operations historically occurred north of about 28° N. lat. The recently observed takes fall into this pattern, all having occurred north of 30° N. lat. NMFS believes that the prohibition of shallow longline sets (which fishermen typically use for catching swordfish), if adhered to, will avoid or minimize the takes of loggerhead turtles in the Hawaii longline fishery. NMFS has information suggesting that the recent loggerhead turtle takes occurred during fishing trips in which the vessels might have failed to follow the existing turtle conservation regulations. However, given the incidental takes of loggerhead turtles reported, NMFS has decided to take emergency action to immediately close waters north of 26° N. lat. and to impose a swordfish trip limit to ensure the protection of loggerhead turtles. The limit on swordfish landings from a trip

is based on vessel logbook data from trips made by Hawaii longline vessels during which tuna were the target species. Based on available data, 95 percent of trips targeting tuna returned with 10 or fewer swordfish. Thus, setting the limit at 10 swordfish per trip accounts for the vast majority of tuna trips during which swordfish were caught. This limit will help minimize bycatch during tuna trips.

The prohibitions contained in this emergency interim rule are expected to result in a geographical separation of Hawaii longline vessels from loggerhead turtles and to remove economic incentives to make shallow longline sets. The prohibitions of this emergency interim rule facilitate enforcement. NMFS can enforce the trip limit dockside as a vessel offloads its catch, and the closure north of 26° N. lat. can be monitored using the vessel monitoring system (VMS); VMS units have been placed on each Hawaii longline vessel and document the position of each vessel while fishing. The provisions of this emergency interim rule will allow NMFS to implement the protective measures of the Court Order, both BiOps, and the earlier emergency interim rule in a more effective manner. In addition, NMFS intends to issue a proposed rule to make the new 10-swordfish trip limit permanent.

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

Only in the past month has NMFS detected fishing by multiple vessels north of 30° N. lat., with unanticipated large bycatches of swordfish and the consequent takes of loggerhead turtles. When promulgating the June 12, 2001, emergency rule, based on the operational patterns of the Hawaii longline fleet during the previous 10 to 11 months, NMFS did not anticipate that some vessels would fish in the northern area of the Hawaii longline fishery. The March 30, 2001, Court Order included discussion of implementing management measures through regulations to reduce adverse impacts on sea turtles. NMFS is publishing this emergency interim rule in order to afford additional protection to sea turtles while NMFS prepares permanent measures, including the 10-swordfish trip limit, that NMFS will promulgate through proposed and final rulemaking.

Emergency action is also required to comply with the terms and conditions of the BiOp issued on March 29, 2001, by NMFS, to avoid the likelihood of jeopardy to endangered loggerhead turtles and to ensure that no

irretrievable or irreversible commitment of resources is made which would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

#### *Immediate Benefits*

NMFS anticipates that this rule will principally benefit loggerhead turtles by geographically separating them from the Hawaii longline fleet, thereby significantly reducing the likelihood that the Hawaii longline fleet will take additional loggerhead turtles. The prohibition on retaining or landing more than 10 swordfish per trip is likely to benefit all sea turtle species that interact with Hawaii longline vessels by reducing overall fishing effort in the more near-surface waters of the area in which the swordfish sector of the Hawaii-based longline fleet operates, thus minimizing interactions with sea turtles. This emergency interim rule may also benefit seabirds because it will ban longline fishing north of 26° N. lat., thus eliminating the potential for the Hawaii longline fishery to take seabirds that historically occur in larger numbers north of approximately 25° N. lat.

#### **Classification**

The Assistant Administrator (AA) finds that this emergency interim rule, which is being implemented under section 305(c) of the Magnuson-Stevens Act, is needed to implement the reasonable and prudent alternative and the terms and conditions of the BiOp on sea turtles, facilitate effective enforcement, and ensure compliance with ESA sections 7(a)(2) and 7(d). Under section 305(c) of the Magnuson-Stevens Act, this emergency interim rule may remain in effect for no more than 180 days after the date this rule is published, unless extended for one additional period of no more than 180 days.

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

NMFS prepared an FEIS for the FMP that describes the impact on the human environment of fishing under the FMP, and an EA for this rule, as required by the National Environmental Policy Act. NMFS also prepared several RIRs, covering this and related actions, that assess the net national benefits of protecting sea turtles. This emergency interim rule is of limited duration and is expected to result in a reduction in sea turtle and seabird interactions and mortalities caused by the Hawaii longline fishery. The Hawaii longline fishery averaged annual ex-vessel gross revenues of \$40.7 million between 1994–1998. The economic impacts of

these measures, which are of limited duration, cannot be precisely estimated due to a lack of data but are expected to be less than \$3.5 million. Copies of the EA, FEIS, and RIRs are available (see ADDRESSES).

The AA finds, for good cause, under 5 U.S.C. 553(b)(B), that providing prior notice and opportunity for public comment is impracticable and not in the public interest, given that the action implements mandatory protective measures to address the recent takes of loggerhead turtles above 30° N. lat. Until these measures are implemented, this fishery will continue to take sea turtles. Allowing the fishery to continue while accepting public comments is contrary to the public interest in protecting and minimizing the take of endangered and threatened sea turtles, because it would likely result in additional loggerhead turtle takes and could jeopardize their continued existence. Further, failure to act quickly to stop these takes could require the complete closure of the fishery under the terms of the BiOp, creating additional economic hardship on individuals participating in the fishery. Similarly, the AA finds good cause, under 5 U.S.C. 553(d)(3), not to delay the effectiveness of this rule for 30 days, given the recent takes of loggerhead turtles above 30° N. lat. In response to the recent reports of incidental takes of loggerhead turtles by Hawaii longline vessels during fishing operations north of 30° N. lat., this rule is intended to immediately close waters above 26° N. lat. and to impose a swordfish trip limit to protect loggerhead turtles. Delay in implementation of these measures is likely to result in additional loggerhead turtle takes. Accordingly, the AA is making this emergency interim rule effective the date of publication in the **Federal Register**.

Because this emergency interim rule is not required to be published with notice and opportunity for public comment by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply.

#### 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: April 1, 2002.

**John Oliver,**

*Deputy Assistant Administrator for Operations, 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, paragraph (nn) is suspended and new paragraphs (vv) and (ww) are added to read as follows:

##### **§ 660.22 Prohibitions.**

\* \* \* \* \*

(vv) Fish for Pacific pelagic management unit species with a vessel registered for use under a Hawaii longline limited access permit in violation of § 660.34(b), (c), (g), (h), and (i).

(ww) Catch and retain, or land, more than 10 swordfish (*Xiphias gladius*) per trip from any vessel registered for use under a Hawaii longline limited access permit when any fishing during the trip occurred north of the equator.

3. In § 660.34, a new paragraph (i) is added to read as follows:

##### **§ 660.34 Hawaii emergency longline fishing restrictions.**

\* \* \* \* \*

(i) A vessel registered for use under a Hawaii longline access permit may not use longline gear to fish for Pacific pelagic management unit species north of 26° N. lat.

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#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 679**

[Docket No. 011218304-1304-01; I.D. 040102E]

##### **Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District of the Gulf of Alaska**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in the West

Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pollock total allowable catch (TAC) specified for the West Yakutat District in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), April 2, 2002, until 2400 hrs, A.l.t., December 31, 2002.

##### **FOR FURTHER INFORMATION CONTACT:**

Mary Furuness, 907-586-7228

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The pollock TAC in the West Yakutat District, Statistical Area 640, was established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002) as 1,165 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC of pollock in the West Yakutat District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,115 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

##### **Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the pollock TAC in the West Yakutat District constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to