

(3) The operator of any vessel within this security zone must:

(i) Stop the vessel immediately upon being directed to do so by the Captain of the Port or his or her designated representative.

(ii) Proceed as directed by the Captain of the Port or his or her designated representative.

(d) *Effective period.* This section is effective from October 1, 2005, until December 31, 2005.

Dated: September 30, 2005.

**Byron L. Black,**

*Commander, U.S. Coast Guard, Captain of the Port, Commanding Officer Marine Safety Unit Wilmington, North Carolina.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 050801214-5283-02; I.D. 072105D]

RIN 0648-AQ91

#### Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Sea Turtle Mitigation Measures

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to reduce and mitigate interactions between sea turtles and fisheries managed under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP). This rule includes requirements for attending protected species workshops, for handling, resuscitating, and releasing sea turtles that are hooked or entangled in fishing gear, and for fishing gear configuration. This action is being taken in part to comply with the terms and conditions of a 2004 Biological Opinion on impacts on sea turtles by fisheries managed under the Pelagics FMP.

**DATES:** Effective December 15, 2005.

**ADDRESSES:** Copies of the following documents are available from William L. Robinson, Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814:

- Regulatory amendment document entitled "Sea Turtle Mitigation

Measures Gear and Handling Requirements, Protected Species Workshop Attendance, and Shallow-Setting Restrictions A Regulatory Amendment to the Western Pacific Pelagics Fishery Management Plan," which contains an Environmental Assessment (EA), Regulatory Impact Review and a Final Regulatory Flexibility Assessment;

- The Final Regulatory Flexibility Assessment; and
- The Finding of No Significant Impact (FONSI) for the EA.

Requests for these documents should indicate whether paper copies or electronic copies on CD-ROM are preferred. The documents are also available at the following web site: <http://swr.nmfs.noaa.gov/pir>.

**FOR FURTHER INFORMATION CONTACT:** Robert Harman, Sustainable Fisheries Division, PIR, NMFS, 808-944-2271.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This **Federal Register** document is also accessible via the Internet at: <http://www.archives.gov/federal-register/publications>.

On August 15, 2005, NMFS published in the **Federal Register** a proposed rule (70 FR 47777) that would require vessel owners and operators to attend protected species workshops, to handle, resuscitate, and release sea turtles that are hooked or entangled in fishing gear, and to modify fishing gear configuration. This action is being taken in part to comply with the terms and conditions of a 2004 Biological Opinion resulting from a section 7 consultation under the Endangered Species Act (ESA) that analyzed the impacts on sea turtles caused by fisheries managed under the Pelagics FMP.

In a Biological Opinion issued on February 23, 2004, NMFS concluded that the fisheries managed under the Pelagics FMP were not likely to jeopardize the continued existence of sea turtles or other species listed as threatened or endangered under the ESA. Among other things, the terms and conditions of the 2004 Biological Opinion require the following: (1) owners and operators of vessels registered for use under longline general permits to attend protected species workshops annually, (2) owners and operators of vessels registered for use under longline general permits to carry and use dip nets, line clippers, and bolt cutters, and follow handling, resuscitation, and release requirements for incidentally hooked or entangled sea turtles, and (3) operators of non-longline vessels using hooks to target pelagic

management unit species to follow sea turtle handling, resuscitation, and release requirements, as well as to remove the maximum amount of the gear possible from incidentally hooked or entangled sea turtles.

In addition to recommending the above three measures, the Western Pacific Fishery Management Council (WPFMC) also recommended that NMFS include a fourth measure in this rule to extend to all longline vessels managed under the Pelagics FMP that may shallow-set north of the Equator the conservation benefits derived from the use of circle hooks, mackerel-type bait, and dehookers. The fourth measure also removes incentives for owners of Hawaii-based longline vessels to shed their permits in favor of general permits for the purpose of avoiding the requirement to use circle hooks, mackerel bait, etc., when shallow-setting north of the Equator.

Additional background on this final rule is found in the preamble to the proposed rule (70 FR 47777, published August 15, 2005) and is not repeated here.

#### Comments and Responses

NMFS received comments on the proposed rule (70 FR 47777, published August 15, 2005) from one interested person. NMFS responds to the comment, as follows:

*Comment:* The commenter supported the requirement for vessel owners and operators to attend protected species workshops, and the requirement for the owners and operators to be recertified regularly so that their knowledge of protected species stays current.

*Response:* NMFS appreciates the support for the protected species workshop requirement, and notes that owners and operators must attend the workshop annually to obtain updated information about protected resources.

#### Changes to the Proposed Rule

In § 660.32, the regulatory text in paragraph (a)(3) is corrected to clarify that vessels affected by this paragraph are those with freeboards of 3 ft (0.91 m) or less. The proposed rule had accurately referred in the preamble and in the title of the regulatory text to vessels with freeboards of 3 ft (0.91 m) or less, but had inadvertently referred in the regulatory text described the paragraph as applying to vessels with freeboards "greater than" 3 ft (0.91 m). NMFS received no public comment on this inadvertency.

#### Classification

The Administrator, Pacific Islands Region, NMFS, determined that this rule

is necessary for the conservation and management of the pelagic fisheries on the western Pacific region, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The potential economic impacts of this final rule on small entities were identified in an Initial Regulatory Flexibility Analysis (IRFA) and summarized in a **Federal Register** notice published August 15, 2005 (70 FR 47777). NMFS subsequently prepared a Final Regulatory Flexibility Analysis (FRFA). A description of why the action is being considered, the objectives and legal basis for the action, and a description of the action, may be found at the beginning of this section. There are no recordkeeping or reporting requirements in this rule. No public comment was made on the IRFA.

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 rule making process, a small entity compliance guide (compliance guide) was prepared. Copies of this final rule and the compliance guide will be sent to all holders of permits issued for the western Pacific pelagic fisheries. The compliance guide will be available at the following web site <http://swr.nmfs.noaa.gov/pir>. Copies can also be obtained from the PIR (see **ADDRESSES**).

This rule does not duplicate, overlap, or conflict with any relevant Federal rules. All affected vessels are considered to be small entities. Therefore, there are no economic impacts resulting from disproportionality between large and small vessels. A summary of the analysis follows.

Most fishing vessels operating in the western Pacific region under the Pelagics FMP are owner-operated, with few individuals holding permits for more than one vessel. There are estimated to be between 9,000 and 16,000 of these fishing operations (these estimated totals may include vessels that do not operate in EEZ waters), all of which are believed to be small businesses, i.e., according to Small Business Administration guidelines,

they have gross revenues of less than \$3.5 million annually.

Previously, all operators of longline vessels managed under the Pelagics FMP were required to attend protected species workshops. This requirement was removed by a U.S. District Court on April 1, 2004 (D.D.C., Civ. No. 01-0765). Requiring both the owners and operators of vessels registered for use under longline general permits to annually attend protected species workshops will have a minimal cost for those who reside in Hawaii or American Samoa, where the training workshops are conducted. Some 15 percent of the vessels that fish in American Samoa and Hawaii under longline permits, however, have owners that reside outside of those two areas. A substantial travel cost to attend the workshops would be incurred by those people. NMFS is currently accommodating the owners and operators of Hawaii-based vessels that live outside Hawaii by providing interim protected species training via computer disk, mailed to the owner or operator. This type of remote training and certification relieves potential travel costs, and may be further developed and implemented for other owners and operators who are not able to attend the workshops in person.

Owners and operators of the vessels that are registered for use under longline general permits were previously required to carry and use dipnets, long-handled line clippers, and bolt cutters, so most vessels with longline general permits already have this gear. However, these measures were also removed by the Federal Court in the case cited above. If the owners need to re-equip their vessels, the costs are not expected to exceed \$100 per vessel. The WPFMC recommended that small longline vessels such as alias, i.e., American Samoa-based catamaran longline vessels generally less than 40 ft (12.2 m) in length, not be required to carry a dip net or long-handled line clippers because, due to the low freeboards on these boats, operators can simply retrieve and release the turtle from the side of the vessel without risk of additional injury to the animal.

The WPFMC's recommendation to require vessels registered under a longline general permit to use size 18/0 or larger circle hooks with a 10° offset, mackerel-type bait, and dehookers when shallow-setting north of the Equator would incur the following costs: Re-equipping longlines with 18/0 circle hooks plus swivels would cost approximately \$1.50/hook, and a large (longer than 75 ft or 22.8 m) longline vessel generally deploys 2,000-2,500

hooks/set, so the cost per vessel of that size would be \$3,000 to \$3,750. American Samoa-based longline vessels already use mackerel-type bait, i.e., sardine or saury (sanma), so there would be no additional cost for the bait requirement for these vessels. Obtaining approved dehookers and associated equipment would cost about \$500 per vessel. The WPFMC recommended that small longline vessels with freeboards of less than or equal to three feet not be required to carry long-handled dehookers because operators can more effectively and safely use short-handled dehookers to release sea turtles without risk of additional injury to the animal.

Under this rule, the total cost to equip a vessel registered for use with a longline general permit to shallow-set north of the Equator is estimated to be between \$3,500 and \$4,250. An ongoing additional annual replacement cost of \$0.20 per hook would also be required as circle hooks are slightly more expensive than typical "J" hooks.

The requirement for operators of all vessels that use hooks to target PMUS to follow sea turtle handling, resuscitation, and release requirements, including removing trailing gear, is not expected to exact any economic burden on these fishery participants because no gear requirements are being proposed for non-longline vessels, and interactions are rare.

For each of the four measures recommended by the WPFMC, three alternatives were developed, so altogether, 12 alternatives were considered. The alternatives considered for the measure regarding protected species workshop attendance by owners and operators of vessels registered for use under longline general permits were: (1) no action maintaining the status quo; (2) requiring annual attendance by only vessel operators; and (3) requiring annual attendance by both vessel owners and operators.

The alternatives considered for the measure regarding sea turtle mitigation gear (i.e., dip nets, line clippers, and bolt cutters) and handling, resuscitation, and release requirements were: (1) no action maintaining the status quo; (2) requiring owners and operators of vessels registered under a longline general permit to carry and use dip nets, line clippers, and bolt cutters, as well as follow handling, resuscitation, and release requirements for hooked or entangled sea turtles (vessels with 3 ft (0.91 m) of freeboard or less would be exempt from carrying dip nets or long-handled line clippers); and (3) requiring owners and operators of vessels registered under a longline general permit to carry and use dip nets, line

clippers, and bolt cutters, as well as follow handling, resuscitation, and release requirements for hooked or entangled sea turtles, with no exemptions for longline vessels with freeboards less than three ft (0.91 m).

The alternatives for the measure regarding vessels that use hooks to target pelagic management unit species were: (1) no action maintaining the status quo; (2) requiring vessel owners and operators to follow sea turtle handling, resuscitation, and release requirements, including the removal of trailing gear from a hooked or entangled sea turtle when fishing in the EEZ of the western Pacific region; and (3) requiring vessel owners and operators to follow sea turtle handling, resuscitation, and release requirements, including the removal of trailing gear, wherever they fish.

The alternatives for the measure regarding gear and bait requirements for owners and operators of vessels registered for use under a longline general permit that may shallow-set north of the Equator were: (1) no action maintaining the status quo; (2) requiring owners and operators to use 18/0 or larger circle hooks with 10° offset, mackerel-type bait, and dehookers when shallow-setting north of the Equator; and (3) prohibiting shallow-setting north of the Equator by vessels registered under longline general permits.

The following alternative was preferred because it best complied with the terms and conditions of the 2004 Biological Opinion: (1) requiring annual workshop attendance by both owners and operators; (2) requiring owners and operators of vessels registered for use under a longline general permit to carry and use dip nets, line clippers, and bolt cutters, as well as to follow handling, resuscitation, and release requirements for hooked or entangled sea turtles (vessels with 3 ft (0.91 m) of freeboard or less would be exempted from carrying dip nets or long-handled line clippers); (3) requiring longline vessel owners and operators to follow sea turtle handling, resuscitation, and release requirements, including the removal of trailing gear wherever they fish; and (4) requiring longline vessels owners and operators to use 18/0 or larger circle hooks with 10F° offset, mackerel-type bait, and dehookers when shallow-setting north of the Equator (vessels with 3 ft (0.91 m) of freeboard or less would not be required to carry long handled dehookers).

The inclusion of turtle handling requirements contained in 50 CFR 660.32 (c) and (d) (which largely reflects those in 50 CFR 223.206) is necessary

because 50 CFR 223.206 only applies to threatened species of sea turtles. This rule extends those handling requirements to interactions between Pelagics FMP fishing vessels and all species of sea turtles.

**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: November 7, 2005.

**James W. Balsiger,**

*Acting 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. In § 660.22, paragraphs (ff), (gg), (ii), (ll), (nn), and (oo) are revised to read as follows:

**§ 660.22 Prohibitions.**

\* \* \* \* \*

(ff) Own or operate a vessel registered for use under any longline permit issued under § 660.21 while engaged in longline fishing for Pelagic Management Unit Species and fail to be certified for completion of a NMFS protected species workshop, in violation of § 660.34(a).

(gg) Own or operate a vessel registered for use under any longline permit issued under § 660.21 while engaged in longline fishing for Pelagic Management Unit Species without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof, in violation of § 660.34(d).

\* \* \* \* \*

(ii) Fail to carry, or fail to use, a line clipper, dip net, or dehooker on a vessel registered for use under any longline permit issued under § 660.21, in violation of § 660.32.

\* \* \* \* \*

(ll) When operating a vessel registered for use under any longline permit issued under § 660.21 or operating a vessel using hooks to target Pelagic Management Unit Species while fishing under the Pelagics FMP, fail to comply with the sea turtle handling requirements, in violation of § 660.32(b).

\* \* \* \* \*

(nn) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 660.21 north of the Equator (0° lat.) with hooks other than offset circle hooks sized 18/0 or larger, with a 10° offset, in violation of § 660.33(f).

(oo) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 660.21 north of the Equator (0° lat.) with bait other than mackerel-type bait, in violation of § 660.33(g).

\* \* \* \* \*

■ 3. In § 660.32, paragraphs (c) and (d) are removed; paragraphs (a)(2) through (a)(4) are redesignated as paragraphs (a)(4) through (a)(6); paragraphs (a)(1), (b), and newly redesignated paragraph (a)(4) are revised; and paragraphs (a) introductory text, (a)(2), and (a)(3) are added to read as follows:

**§ 660.32 Sea turtle mitigation measures.**

(a) *Possession and use of required mitigation gear.* The gear required in paragraph (a) of this section must be used according to the sea turtle handling requirements set forth in paragraph (b) of this section.

(1) *Hawaii longline limited access permits.* Any owner or operator of a vessel registered for use under a Hawaii longline limited access permit must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting the minimum design and performance standards specified in paragraph (a)(4) of this section.

(2) *Other longline vessels with freeboards of more than 3 ft (0.91m).* Any owner or operator of a longline vessel with a permit issued under § 660.21 other than a Hawaii limited access longline permit and that has a freeboard of more than 3 ft (0.91 m) must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting the minimum design and performance standards specified in paragraph (a)(7) of this section.

(3) *Other longline vessels with freeboards of 3 ft (0.91 m) or less.* Any owner or operator of a longline vessel with a permit issued under § 660.21 other than a Hawaii limited access longline permit and that has a freeboard of 3 ft (0.91 m) or less must carry aboard their vessels line clippers capable of cutting the vessels fishing line or leader

within approximately 1 ft (0.3 m) of the eye of an embedded hook, as well as wire or bolt cutters capable of cutting through the vessel's hooks.

(4) *Handline, troll, pole-and-line, and other vessels using hooks other than longline vessels.* Any owner or operator of a vessel fishing under the Pelagics FMP with hooks other than longline gear are not required to carry specific mitigation gear, but must comply with the handling requirements set forth in paragraph (b) of this section.

\* \* \* \* \*

(b) *Handling requirements.* If a sea turtle is observed to be hooked or entangled in fishing gear from any vessel fishing under the Pelagics FMP, vessel owners and operators must use the required mitigation gear set forth in paragraph (a) of this section to comply with these handling requirements. Any hooked or entangled sea turtle must be handled in a manner to minimize injury and promote survival.

(1) *Sea turtles that cannot be brought aboard.* In instances where a sea turtle is too large to be brought aboard or the sea turtle cannot be brought aboard without causing further injury to the sea turtle, the vessel owner or operator must disentangle and remove the gear, or cut the line as close as possible to the hook or entanglement, to remove the maximum amount of the gear from the sea turtle.

(2) *Sea turtles that can be brought aboard.* In instances where a sea turtle is not too large to be brought aboard, or the sea turtle can be brought aboard without causing further injury to the turtle, the vessel owner or operator must take the following actions:

(i) Immediately bring the sea turtle aboard;

(ii) Handle the sea turtle in accordance with the procedures in paragraphs (b)(3) and (b)(4) of this section; and

(iii) Disentangle and remove the gear, or cut the line as close as possible to the hook or entanglement, to remove the maximum amount of the gear from the sea turtle.

(3) *Sea turtle resuscitation.* If a sea turtle appears dead or comatose, the following actions must be taken:

(i) Place the sea turtle on its belly (on the bottom shell or plastron) so that the

sea turtle is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation varies with the size of the sea turtle; greater elevations are needed for larger sea turtles;

(ii) Administer a reflex test at least once every 3 hours. The test is to be performed by gently touching the eye and pinching the tail of a sea turtle to determine if the sea turtle is responsive;

(iii) Keep the sea turtle shaded and damp or moist (but under no circumstances place the sea turtle into a container holding water). A water-soaked towel placed over the eyes, carapace and flippers is the most effective method of keeping a sea turtle moist; and

(iv) Return to the sea any sea turtle that revives and becomes active in the manner described in paragraph (b)(4) of this section. Sea turtles that fail to revive within the 24-hour period must also be returned to the sea in the manner described in paragraph (b)(4) of this section.

(4) *Sea turtle release.* After handling a sea turtle in accordance with the requirements of paragraphs (b)(2) and (b)(3) of this section, the sea turtle must be returned to the ocean after identification unless NMFS requests the retention of a dead sea turtle for research. In releasing a sea turtle the vessel owner or operator must:

(i) Place the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped, and release the sea turtle away from deployed gear; and

(ii) Observe that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

(5) *Other sea turtle requirements.* No sea turtle, including a dead turtle, may be consumed or sold. A sea turtle may be landed, offloaded, transhipped or kept below deck only if NMFS requests the retention of a dead sea turtle for research.

■ 4. In § 660.33, paragraphs (f) and (g) are revised to read as follows:

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

\* \* \* \* \*

(f) Any owner or operator of a vessel registered for use under any longline permit issued under § 660.21 must use only offset circle hooks sized 18/0 or larger, with a 10° offset, when shallow-setting north of the Equator (0° lat.). As used in this paragraph, an offset circle hook sized 18/0 or larger is one with an outer diameter at its widest point is no smaller than 1.97 inches (50 mm) when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). As used in this paragraph, a 10° offset is measured from the barbed end of the hook and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

(g) Any owner or operator of a vessel registered for use under any longline permit issued under § 660.21 must use only mackerel-type bait when shallow-setting north of the Equator (0° lat.). As used in this paragraph, mackerel-type bait means a whole fusiform fish with a predominantly blue, green or gray back and predominantly gray, silver or white lower sides and belly.

\* \* \* \* \*

■ 5. In § 660.34, paragraphs (a), (c), and (d) are revised to read as follows:

**§ 660.34 Protected species workshops.**

(a) Each year, both the owner and the operator of a vessel registered for use under any longline permit issued under § 660.21 must attend and be certified for completion of a workshop conducted by NMFS on interaction mitigation techniques for sea turtles, seabirds and other protected species.

\* \* \* \* \*

(c) An owner of a vessel registered for use under any longline permit issued under § 660.21 must have a valid protected species workshop certificate issued by NMFS to the owner of the vessel, in order to maintain or renew their vessel registration.

(d) An owner and an operator of a vessel registered for use under any longline permit issued under § 660.21 must have on board the vessel a valid protected species workshop certificate issued by NMFS to the operator of the vessel, or a legible copy thereof.

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