

## ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
12 Puget Sound prairie species (9 subspecies of pocket gopher ( <i>Thomomys mazama</i> ssp.) (LPN = 3), streaked horned lark (LPN = 3), Taylor's checkerspot (LPN = 3), Mardon skipper (LPN = 8)) <sup>3</sup> .	Proposed listing.
2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2)) <sup>5</sup> ..... Jemez Mountain salamander (LPN = 2) <sup>5</sup> .....	Proposed listing. Proposed listing.

<sup>1</sup> Funds for listing actions for these species were provided in previous FYs.

<sup>2</sup> Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.

<sup>3</sup> Partially funded with FY 2010 funds and FY 2011 funds.

<sup>4</sup> Funded with FY 2010 funds.

<sup>5</sup> Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The striped newt will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed classification of the striped newt will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

#### References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the U.S. Fish and Wildlife Service, North Florida Field Office (see ADDRESSES section).

#### Authors

The primary authors of this notice are the staff members of the North Florida Field Office.

#### Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 3, 2011.

**Rowan W. Gould,**

*Acting Director, Fish and Wildlife Service.*

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 100218104-1291-01]

RIN 0648-AY27

#### Western Pacific Pelagic Fisheries; American Samoa Longline Gear Modifications To Reduce Turtle Interactions

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would require specific gear configuration for pelagic longline fishing for vessels based in American Samoa, as well as other U.S. longline vessels longer than 40 ft (12.2 m), while fishing south of the Equator in the Pacific Ocean. The requirements include minimum float line and branch line lengths, number of hooks between floats, and distances between floats and adjacent hooks. The rule would also limit the number of swordfish taken. The proposed action is intended to ensure that longline hooks are set at depths of 100 meters (m) or deeper to reduce interactions between longline fishing and Pacific green sea turtles.

**DATES:** Comments on the proposed rule must be received by July 22, 2011.

**ADDRESSES:** Comments on this proposed rule, identified by 0648-AY27, may be sent to either of the following addresses:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>; or

- **Mail:** Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

**Instructions:** Comments must be submitted to one of the above two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required name and organization fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

The Western Pacific Fishery Management Council (Council) prepared Amendment 5 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FEP), including an environmental assessment, that presents background information on this proposed rule. The Pelagics FEP and Amendment 5 are available from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, <http://www.wpcouncil.org>.

**FOR FURTHER INFORMATION CONTACT:** Adam Bailey, Sustainable Fisheries Division, NMFS PIR, 808-944-2248.

**SUPPLEMENTARY INFORMATION:** Longline fishing employs a mainline that is suspended below the surface by floats and float lines that are attached along

the mainline with clips. Branch lines, each with a single baited hook, are attached to the mainline. Longline deployment is typically referred to as "setting," and the gear, once it is deployed, is typically referred to as a "set." Once set, longline gear is left to fish for several hours, and brought back on board along with any catch.

The limited access program for the American Samoa pelagic longline fishery consists of four permit classes based on vessel length. The pelagic longline fishery targets albacore for canning in Pago Pago, American Samoa. The larger longline vessels (over 40 ft (12.2 m) that include Classes B, C, and D) set about 40 nm (75 km) of mainline with an average of about 3,000 hooks per day. This fishery has historically fished at depths from 50 to 300 m, or deeper. In 2009, 26 vessels based in American Samoa made 4,689 sets, and landed 8.6 million lb of albacore, and smaller amounts of skipjack, yellowfin, and bigeye tunas. Preliminary 2010 data show the number of sets and albacore landings were similar to 2009. The fishery also takes wahoo, oilfish, blue marlin, blue sharks, and other pelagic fish.

The smaller Class A (40 ft (12.2 m) and shorter) longline vessels, or alias, use manually-powered mainline drums that hold about four miles of monofilament line, and set around 300–350 hooks per set. These smaller vessels generally do not travel long distances from shore or carry large quantities of fish and, ordinarily conduct one- or two-day trips less than 50 nm (93 km) from shore. From 2008 to 2010, only one alias was actively longline fishing.

The American Samoa longline fishery is managed under a host of requirements, including a limited access program with a maximum of 60 vessels in all size classes, even though fewer than 30 have been active in recent years. Other requirements include Federal permits and logbooks and (for certain vessel size classes) observers and a satellite vessel monitoring system. Longline vessels and gear must be marked with their identification markings. Large longliners (50 ft and longer) may not fish within designated prohibited areas around the islands of American Samoa. Each year, owners and operators of American Samoa longline vessels must attend and be certified in a protected species workshop on identification, mitigation, handling, and release techniques for sea turtles, seabirds, and marine mammals. Fishermen must use specific equipment and techniques for handling and releasing any sea turtles that are hooked or entangled.

While many of the requirements noted above were established to reduce the number and severity of interactions with protected species, the American Samoa-based longline fishery has continued to interact with (hooked or entangled) Pacific green sea turtles (*Chelonia mydas*), which are listed as threatened under the Endangered Species Act (ESA). Most of the interactions are believed to have occurred in the shallowest 100 m of the water column, and most injuries to the sea turtles have been fatal. The NMFS observer program reported 13 green sea turtle interactions for the American Samoa longline fishery from June 2006 to July 2010. (Additional interactions have been observed since July 2010, but the details of these more recent interactions, such as hook depth, have not been analyzed, so they are not included here.) Nine of the turtles were hooked by the shallowest hooks (first three hooks from the float). Green sea turtles are known to mainly inhabit waters within 100 m of the ocean's surface, and it is expected that forcing hooks to fish at 100 m or deeper would result in fewer green sea turtle interactions.

In Amendment 5, dated May 12, 2011, the Council recommended that NMFS require American Samoa longline fishermen to use a suite of gear configurations designed to ensure that longline hooks are set to fish at least 100 m deep, away from the primary turtle habitat to reduce interactions. This proposed rule would implement the Council's recommendations. The proposed gear configuration requirements would apply to Class B, C, and D vessels (that is, vessels over 40 ft (12.2 m) in length). These vessels would be required to deploy float lines at least 30 m long, keep a minimum distance of 70 m between any float line and the closest branch line in either direction along the mainline, and attach at least 15 branch lines between any two float lines. These vessels would also be prohibited from possessing or landing more than ten (10) swordfish per trip. Because swordfish are typically caught in waters shallower than 100 m, limiting the number of swordfish that fishermen may retain is expected to ensure that gear is set to the required depth of 100 m or deeper, rather than shallower to target swordfish.

This proposed rule would also establish a gear configuration requirement that was not recommended in Amendment 5, rather in a September 16, 2010, Biological Opinion resulting from ESA section 7 consultation on the proposed action. The Biological Opinion requires each branch line

(connected to the mainline and terminating in a single baited hook) to be at least 10 meters long to help ensure that hooks are set 100 m or deeper from the surface. Accordingly, this proposed rule would implement the Biological Opinion's additional requirement.

Class A vessels (40 ft (12.2 m) and shorter) are not included in this proposed action. There are few current data to suggest that longline fishing from these smaller vessels results in interactions with sea turtles. NMFS will continue to monitor fishing activities by these small vessels, and, in coordination with the Council, will consider appropriate conservation and management measures should evidence of sea turtle interactions be developed.

The gear configuration requirement would apply to U.S. longline vessels in the Pacific Ocean only south of the Equator (0° lat.) because different sets of requirements are in place to protect sea turtles in the Hawaii-based longline fisheries, which has operated primarily north of the Equator. Each of the three large-scale U.S. western Pacific longline fisheries (Hawaii deep-set, Hawaii shallow-set, and American Samoa) are monitored under separate sea turtle incidental take statements, and they each operate under different sets of regulations. To ensure efficient administration, uniform enforcement, and ease of understanding, NMFS would require the proposed gear configurations for all U.S. longline fishing south of the Equator in the Pacific Ocean. This proposed rule would also make administrative clarifications to the names of several tuna and marlin species caught in western Pacific pelagic fisheries. The English and scientific names of the bluefin tuna are revised from "Northern bluefin tuna, *Thunnus thynnus*" to "Pacific bluefin tuna, *Thunnus orientalis*." The English and scientific names of the blue marlin are revised from "Indo-Pacific blue marlin, *Makaira mazara*" to "Pacific blue marlin, *Makaira nigricans*." The scientific names of black marlin and striped marlin are revised to *Istiompax indica*, and *Kajikia audax*, respectively.

Public comments on this proposed rule must be received by close of business on July 22, 2011, not postmarked, or otherwise transmitted by that date to be considered. Late comments will not be accepted.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pelagics FEP, Amendment 5,

other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The analysis follows:

The proposed rule would require longline fishermen to configure their gear to ensure that longline hooks are set to fish at least 100 meters (m) deep, away from the primary turtle habitat. The proposed measures would require fishermen on vessels longer than 40 ft to use float lines that are at least 30 m long, and maintain at least 70 m of mainline without hooks between float lines and adjacent branch lines. Fishermen on these larger vessels would be required to deploy at least 15 branch lines with hooks between floats. The possession or landing of more than 10 swordfish, which tend to inhabit near-surface waters, would also be prohibited to help ensure that shallow longline fishing does not occur.

This proposed rule would also establish an additional gear configuration requirement that was not recommended in Amendment 5, rather in a September 16, 2010, Biological Opinion resulting from ESA section 7 consultation on the proposed action. NMFS issued the additional requirement as a condition to implement the reasonable and prudent measures of the incidental take statement of that biological opinion. Each branch line (connected to the mainline and terminating in a single baited hook) would have to be at least 10 meters long to help ensure that hooks are set 100 m or deeper from the surface.

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities, either through a significant loss in landings or in expenses incurred. The proposed rule would affect vessels operating in the American Samoa longline fishery that are greater than 40 ft in length. Based on 2009 data, this would suggest that the affected vessels would be as follows: Class B (40.1–50 ft): 0 vessels permitted or active; Class C (50.1–70 ft): 5 active, 12 permitted; and Class D (>70 ft): 20 active, 26 permitted. All vessels having the potential to participate in this fishery are considered to be small entities under the current Small Business Administration definition of small fish-harvesting businesses, that is, their gross receipts do not exceed \$4.0 million.

The proposed gear requirement of at least 70 m of mainline that is free of hooks could be achieved, in part, by removal of the first and last two hooks between each float. The simple removal of these hooks has the potential to reduce albacore catch by 5.1 percent, but fishermen could offset, or mitigate, this potential loss in several ways. They could lengthen the mainline between floats and redistribute the displaced hooks (branch lines), and/or add more mainline

with additional hooks. Research has shown that fishermen who are able to adopt these mitigative activities are likely to increase overall landings of albacore relative to status quo due to the prevalence of albacore, especially larger individuals, at depths of 150–250 m. Fishermen could also increase the number of sets on a single trip or on several trips throughout the year to make up for any loss in catch.

Observer data indicate that longline fishermen operating in American Samoa typically use more than 15 branch lines between each float and, generally, do not possess more than a few swordfish on board at any time, so the requirements on the number of branch lines between floats and limits on the number of swordfish on board do not appear to be potential binding constraints. Recent observer data indicate that some fishermen are already meeting the 30 m minimum float line requirement, and that the average length of float line is about 26 m, with a range of 18–36 m. Fishermen who need to increase the length of float lines would spend about \$0.40 per additional meter of float line, plus minimal labor costs.

In addition to longline vessels based in American Samoa, the proposed rule would also apply south of the Equator to other U.S. longline fishing in the western Pacific, including vessels operating under Hawaii limited access and Western Pacific general permits. Hawaii deep-set longline fishing vessels have fished south of the Equator in the past; however, since 2005, there have been two or fewer vessels fishing per year, comprising 0.05 percent or less of annual fishing effort by the Hawaii deep-set longline fleet. Consequently, the proposed rule is not likely to have a significant economic impact on a significant number of small entities based in Hawaii. Additionally, there is no reliable information about longline vessels based in U.S. western Pacific ports north of the Equator and operating under Western Pacific general longline permits having ever fished south of the Equator; thus, the proposed rule is not likely to have a significant economic impact on a significant number of those small entities.

The proposed rule does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations, or government jurisdictions. There does not appear to be disproportionate economic impacts from this rule based on home port, gear type, or relative vessel size.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

NMFS concluded a formal section 7 consultation under the Endangered Species Act for Amendment 5. In a biological opinion dated September 16, 2010, NMFS determined that fishing activities conducted under Amendment 5, its implementing regulations, and the terms and conditions of the biological opinion are not likely to jeopardize the continued existence or recovery of any endangered or threatened species under the jurisdiction of NMFS or result in the

destruction or adverse modification of critical habitat.

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

#### List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Sea turtles.

Dated: June 1, 2011.

**Eric C. Schwaab,**

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

For the reasons set out in the preamble, 50 CFR chapter VI is proposed to be 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 § 665.800:

A. Add the definitions of “Branch line” and “Float line” in alphabetical order, and

B. In the definition of “Western Pacific pelagic management unit species” remove the entries for “northern bluefin tuna” and “Indo-Pacific blue marlin,” revise the scientific names for “black marlin” and “striped marlin,” and add new entries for “Pacific bluefin tuna” and “Pacific blue marlin,” to read as follows:

##### § 665.800 Definitions.

\* \* \* \* \*

*Branch line* (or *dropper line*) means a line with a hook that is attached to the mainline.

\* \* \* \* \*

*Float line* means a line attached to a mainline used to buoy, or suspend, the mainline in the water column.

\* \* \* \* \*

*Western Pacific pelagic management unit species* means the following species:

English common name	Scientific name
<b>Tunas:</b>	
*	*
Pacific bluefin tuna	<i>Thunnus orientalis</i>
*	*
<b>Billfishes:</b>	
*	*
black marlin .....	<i>Istiompax indica</i>
striped marlin .....	<i>Kajikia audax</i>
*	*
Pacific blue marlin	<i>Makaira nigricans</i>

English common name	Scientific name
*	*
*	*
*	*
3. In § 665.802, add a new paragraph	
(n) to read as follows:	
<b>§ 665.802 Prohibitions.</b>	
*	*
*	*
*	*
*	*
(n) Fail to comply with a term or condition governing longline gear configuration in § 665.813(k) if using a vessel longer than 40 ft (12.2 m) registered for use with any valid longline permit issued pursuant to	
§ 665.801 to fish for western Pacific	

pelagic MUS using longline gear south of the Equator ( $0^{\circ}$  lat.).

\* \* \* \*

4. In § 665.813, add a new paragraph (k) to read as follows:

### **§ 665.813 Western Pacific longline fishing restrictions.**

\* \* \* \*

(k) When fishing south of the Equator ( $0^{\circ}$  lat.) for western Pacific pelagic MUS, owners and operators of vessels longer than 40 ft (12.2 m) registered for use with any valid longline permit issued pursuant to § 665.801 must use longline gear that is configured according to the

requirements in paragraphs (k)(1) through (k)(5) of this section.

(1) Each float line must be at least 30 m long.

(2) At least 15 branch lines must be attached to the mainline between any two float lines attached to the mainline.

(3) Each branch line must be at least 10 meters long.

(4) No branch line may be attached to the mainline closer than 70 meters to any float line.

(5) No more than 10 swordfish may be possessed or landed during a single

fishing trip.

[FR Doc. 2011-13972 Filed]