

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 665**

[Docket No. 100218104-1485-02]

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: Final rule.

SUMMARY: This rule requires specific gear configuration for pelagic longline fishing in the South Pacific. The requirements apply to U.S. vessels longer than 40 ft (12.2 m) while fishing south of the Equator, and include minimum float line and branch line lengths, number of hooks between floats, and distance between floats and adjacent hooks. The rule also limits the number of swordfish taken. The action is intended to ensure that longline hooks fish deeper than 100 meters (m) to reduce interactions with Pacific green sea turtles. This final rule also makes administrative clarifications to the names of several tunas and marlins.

DATES: This final rule is effective September 23, 2011.

ADDRESSES: 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 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: The U.S. pelagic longline fishery based in American Samoa targets albacore for canning in Pago Pago, and also catches skipjack, yellowfin, and bigeye tunas, and other pelagic fish. The fishery interacts with (hooks or entangles) Pacific green sea turtles, which are listed as threatened under the Endangered Species Act (ESA). Most of the turtle interactions occur in waters shallower than 100 m, and most are

fatal. To reduce these interactions, the Council recommended in Amendment 5 that NMFS require fishermen on American Samoa longline vessels and other U.S. longline vessels that fish south of the Equator to configure their fishing gear so that longline hooks are set to fish deeper than 100 meters, away from the primary turtle habitat. Accordingly, this final rule requires fishermen on vessels longer than 40 ft to use float lines that are at least 30 meters long, and maintain a distance between float lines and adjacent branch lines with hooks of at least 70 meters. Fishermen on these longer vessels are required to deploy at least 15 branch lines between floats. The possession or landing of more than 10 swordfish, which tend to inhabit near-surface waters, is prohibited as another means of discouraging shallow longlining.

Another requirement was not part of Amendment 5. In a September 16, 2010, Biological Opinion resulting from ESA Section 7 consultation, NMFS issued a requirement that each branch line (connected to the main line and terminating in a single baited hook) be at least 10 meters long to help ensure that hooks fish deeper than 100 m from the surface. This final rule implements that requirement.

This final rule also makes administrative clarifications to the names of several tuna and marlin species caught in western Pacific pelagic fisheries.

Comments and Responses

On June 7, 2011, NMFS published a proposed rule and request for public comments (76 FR 32929); the comment ended on July 22, 2011. Additional background information on this final rule is found in the preamble to the proposed rule and is not repeated here. NMFS responds to comments, as follows.

Comment 1: The use of short float lines or branch lines to catch swordfish should be prohibited to facilitate enforcement.

Response: NMFS agrees and, thus, both the proposed rule and this final rule require U.S. longline vessels fishing south of the Equator to use float lines at least 30 m long and branch lines at least 10 m long to reduce interactions with Pacific green sea turtles. Because swordfish typically are caught near the surface, the gear requirements will discourage shallow longline fishing for swordfish, resulting in additional protection for turtles. NMFS is also limiting the number of swordfish that can be retained on a longline vessel to 10 to further discourage shallow longline fishing.

Comment 2: One commenter asked if the rule would allow fishermen to shorten float lines by tying knots in the lines.

Response: The rule requires float lines to be at least 30 m long. Although a fisherman could shorten a float line by, for example, tying knots in the line, NMFS clarifies that the requirement is for the float line to be at least 30 m long while deployed. Float lines must not be shortened so their effective length when deployed is less than 30 m. This is part of the overall gear configuration that is intended to have the hooks fish deeper than 100 m, and shortening a float line could result in hooks fishing shallower than 100 m, with a resulting increase in risk to turtles.

Comment 3: Small longline vessels (Class A, 40 ft (12.2 m) and shorter), which are not included in this action, might be interacting with turtles.

Response: There is little information on interactions between these smaller longline vessels (alia) and sea turtles. From 1990-2002, the Secretariat of the Pacific Community (then the South Pacific Commission) deployed observers on alia in (Western, or independent) Samoa; during this time, no sea turtle interactions were observed. In 2003-04, data collectors aboard a high-producing alia in American Samoa also reported no interactions with sea turtles, seabirds, or marine mammals. To date, only one sea turtle interaction has been reported in the American Samoa alia fishery, and this was with a leatherback sea turtle.

Class A vessels are small and the fishing gear is technologically simple. Thus, the float line length requirement may be unduly burdensome and restrict a vessel's fishing operations. Few alia have been operational in recent years, with no expected change. Two alia operated in 2007 and only one fished in 2008-09. If the Class A fishery becomes more active, or if these small vessels are found to interact with turtles, the Council and NMFS may revisit management of Class A vessels.

Changes From the Proposed Rule

There are no changes in the final rule.

Classification

The Administrator, Pacific Islands Region, NMFS, determined that Pelagic FEP Amendment 5 is necessary for the conservation and management of the pelagic longline fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the

Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final 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: August 19, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is 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, add the definitions of “Branch line” and “Float line” in alphabetical order, and 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
Tunas:	
* * * * *	* * * * *
Pacific bluefin tuna ...	<i>Thunnus orientalis</i>
* * * * *	* * * * *
Billfishes:	
Black marlin	<i>Istiompax indica</i>
Striped marlin	<i>Kajikia audax</i>
Pacific blue marlin	<i>Makaira nigricans</i>
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■ 3. In § 665.802, add a new paragraph (n) to read as follows:

§ 665.802 Prohibitions.

* * * * *

(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° lat.).

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■ 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° 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.

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