§ 102–39.65 What are the sales methods?

(a) You must use the methods, terms, and conditions of sale, and the forms prescribed in part 102–38 of this title, in the sale of property being replaced, except for the provisions of §§ 102–38.100 through 102–38.115 of this title regarding negotiated sales. * * *

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[FR Doc. 04–5409 Filed 3–10–04; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–97; RM–5598]

Radio Broadcasting Services; Laughlin, NV

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to Section 73.202(b), FM Table of Allotments, under Nevada for the community of Laughlin.

DATES: Effective March 11, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau (202) 418–2180.

SUPPLEMENTARY INFORMATION: In 1987, the Commission allotted Channel 300C1 to Laughlin, Nevada. *See* 52 FR 38766 (October 19, 1987). The channel is not currently listed in the FM Table of Allotments, Section 73.202(b) under Nevada for the community of Laughlin. Station KVGS(FM) obtained a license for this channel on May 13, 1992. *See* BLH–19910903KD. Station KVGS(FM) currently operates on Channel 300C at Laughlin, Nevada because the station was granted a license to specify operation on Channel 300C in lieu of Channel 300C1 at Laughlin, Nevada on June 20, 2001. *See* BLH–20010327ABN.

Need for Correction

The Code of Federal Regulations must be corrected to include Channel 300C at Laughlin, Nevada.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Accordingly, 47 CFR part 73 is corrected by making the following correcting amendment:

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 Nevada, is amended by adding Channel 300C at Laughlin.

Dated: February 12, 2004.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–5416 Filed 3–10–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 031202301–4067–02; I.D.111403C]

RIN 0648–AR53

Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations

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

ACTION: Final rule.

SUMMARY: NMFS is issuing a final rule to prohibit shallow longline sets of the type normally targeting swordfish on the high seas in the Pacific Ocean east of 150° W. long. by vessels managed under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP). This action is intended to protect endangered and threatened sea turtles from the adverse impacts of shallow longline fishing by U.S. longline fishing vessels in the Pacific Ocean and operating out of the west coast. This rule supplements the regulations that implement the FMP that prohibit shallow longline sets on the high seas in the Pacific Ocean west of 150° W. long. by vessels managed under that FMP. The FMP was partially approved by NMFS on February 4, 2004. Together, these two regulations are expected to conserve leatherback and loggerhead sea turtles as required under the Endangered Species Act (ESA).

DATES: This final rule is effective April 12, 2004.

ADDRESSES: Copies of the FMP, which includes an environmental impact statement (EIS) accompanied by a regulatory impact review (RIR) and an initial regulatory flexibility analysis (IRFA) are available on the internet at *http://www.pcouncil.org/hms/hmsfmp.html* or may be obtained from Daniel Waldeck, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220–1384, Daniel.Waldeck@noaa.gov, (503) 820–2280. This final rule corresponds to the High Seas Pelagic Longline Alternative 3 in the Council EIS, RIR, and IRFA. The final regulatory flexibility analysis (FRFA)is available on the internet at *http://swr.ucsd.edu/* or may be obtained from Tim Price, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802–4213, *Tim.Price@noaa.gov*, (562) 980–4029.

FOR FURTHER INFORMATION CONTACT: Tim Price, NMFS, Southwest Region, Protected Resources Division, 562–980–4029.

SUPPLEMENTARY INFORMATION: Additional information about the status of sea turtles and the West Coast-based pelagic longline fishery can be found in the proposed rule published on December 17, 2003 (68 FR 70219). All species of sea turtles that are known to interact with U.S. longline vessels in the Pacific Ocean are listed as either endangered or threatened under the ESA. The incidental take of endangered species may be authorized only by an incidental take statement issued under section 7 of the ESA or an incidental take permit issued under section 10 of the ESA. The incidental take of threatened species may be authorized only by an incidental take statement in a biological opinion issued pursuant to section 7 of the ESA, an incidental take permit issued pursuant to section 10 of the ESA, or regulations under section 4(d) of the ESA.

A number of longline vessels targeting swordfish unload their catch and re-provision in California ports. Participants in the West Coast-based pelagic longline fishery often fish more than 1,000 nautical miles (1,900 km) offshore and are generally prohibited by state regulations from fishing within 200 nautical miles (370 km) of the West Coast. From October 2001 through January 31, 2004, 409 sets were observed on 20 trips, documenting a total of 46 sea turtle interactions, consisting of 3 leatherback sea turtles, 42 loggerhead sea turtles, and 1 olive ridley sea turtle. All of the observed sea turtles were released alive except two recent loggerhead sea turtles which were dead.

On October 31, 2003, the Pacific Fishery Management Council (Council) submitted the FMP to NMFS for review. The FMP includes management measures for the West Coast-based pelagic longline fishery that prohibits shallow longline sets of the type

normally used to target swordfish on the high seas in the Pacific Ocean west of 150° W. long. by vessels managed under the FMP. In addition, to conserve sea turtles, the FMP requires West Coast-based pelagic longline vessels to have on board and to use dip nets, line cutters, and wire or bolt cutters capable of cutting through the vessel's hooks to release sea turtles with the least harm possible to the sea turtles. On February 4, 2004, NMFS partially approved the FMP. NMFS disapproved the provision of the FMP that would allow West Coast-based pelagic longline vessels to make shallow sets east of the 150° W. Long.. The disapproval of that provision was based, in part, on the biological opinion, dated February 4, 2004, which concluded that allowing shallow set fishing east of 150° W. Long. and north of the equator (0°) was likely to jeopardize loggerhead sea turtles.

Response to Comments

NMFS published a proposed rule on December 17, 2003 (68 FR 70219). NMFS received 127 comments on the proposed rule. There were 124 comments in support of the proposed rule and 3 comments opposed. Most of the comments received in favor of the proposed rule were emails sent by fax containing identical or similar language. NMFS reviewed and considered all comments received in the development of this rule.

Comment 1: Longline vessels departing from California and targeting swordfish on the high seas are not a problem for sea turtles because the fishery is very small, consisting of less than 25 vessels and the fishermen attach their hooks to leaders that are longer than the float lines which allow sea turtles to reach the surface when they are hooked. Moreover, there have been no observed sea turtle mortalities aboard longline vessels departing from California and targeting swordfish on the high seas.

Response: Recent observer data indicate that there were two incidental mortalities of loggerhead sea turtles during a fishing trip which departed from California in which the gear consisted of longer leaders than float lines. These data indicate that mortalities do occur on sets in which the leaders are longer than the ball drop. Although there may only be a few active West Coast-based longline vessels, NMFS estimates that if one million hooks are set by the fleet, there may be 23 to 57 leatherback, 126 to 195 loggerhead, and 1 to 11 olive ridley sea turtles captured incidentally.

Comment 2: If longline vessels departing from California are prohibited from making shallow sets and targeting swordfish, the foreign, unregulated, fleet will shift fishing effort to the waters vacated by the U.S. fleet. The shift in effort to foreign fleets may result in more sea turtles interactions and mortality, causing more harm to sea turtle populations.

Response: Although there is a possibility that fishing effort may shift to foreign nations, at this time, there are no data to support this claim. Moreover, there are no data that show that longline fishing by foreign vessels have higher sea turtle interaction rates.

Comment 3: One commenter indicated that a prohibition on shallow sets was not necessary because West Coast-based longline vessel operators minimize their impact to sea turtles by bringing aboard any hooked sea turtles using a dip net and removing the hook before the animal is released alive back into the ocean. In addition, ARC dehookers for deep hooked turtles are being placed aboard all longline boats fishing out of California.

Response: NMFS agrees that use of a dip net to bring a hooked sea turtle aboard a vessel and removing the hook increases the likelihood of its survival when the animal is released. Under the FMP, vessel operators would be required to comply with sea turtle handling, resuscitation, and release requirements, which include the use of dip nets and the removal of hooks. NMFS considered these factors as part of the proposed action in the ESA section 7 consultation and determined that sea turtle handling, alone, would not obviate the need to prohibit fishing shallow sets.

Comment 4: Regardless of whether a sea turtle has deeply ingested a hook or has been lightly hooked, there does not appear to be any difference in their behavior based on animals that were released alive with satellite transmitter tags.

Response: More recent analyses of satellite telemetry data from transmitters deployed by NMFS' observers were completed to derive survival and hazard functions (transmitted tag defects, battery failure, transmitter detachment, turtle death) for lightly- and deeply-hooked loggerheads by modeling time-to-failure of all transmitters using nonparametric statistical modeling. Based on these analyses, the data indicate that there are significant differences between the survival functions for lightly- and deeply-hooked loggerheads within 90 days after release but no difference between survival functions after this time.

Comment 5: One commenter cited the March 2003 National Geographic magazine which states that 35,000 turtles are illegally killed each year in northwestern Mexico. The commenter felt that when compared to the apparent illegal harvest in Mexico, the longline fishery fishing out of California is not hurting the sea turtle population.

Response: NMFS recognizes that other human activities and natural phenomena pose a serious threat to the survival and recovery of threatened and endangered species. We recognize that we will not be able to recover threatened and endangered species without addressing the full range of human activities and natural phenomena that have caused these species to decline or could cause these species to become extinct in the foreseeable future. Recovering threatened and endangered sea turtles, as with other imperilled marine species, will require an international, cooperative effort that addresses the full suite of threats to those species. Nevertheless, NMFS' task is to identify the direct and indirect effects of the FMP fisheries to determine if the proposed management regime is likely to contribute to the endangerment of threatened and endangered species by appreciably reducing their likelihood of both surviving and recovering in the wild. NMFS considered the direct harvest of sea turtles in Mexico as part of the environmental baseline of the biological opinion and concluded that the FMP fishery will jeopardize the continued existence of loggerhead sea turtles.

Comment 6: California longliners have been working on implementing a sea turtle recovery program in Mexico. If the longline fishery is closed, the California longliners will likely end their current effort to fund sea turtle restoration projects in Baja, Mexico.

Response: NMFS commends the efforts of the West Coast-based longliners to implement a sea turtle recovery program in Mexico. However, NMFS is required to analyze the effects of the West Coast-based longline fishery on listed species and cannot rely upon the potential benefits that are not immediately realized from conservation efforts such as nesting beach protection and educational programs.

Comment 7: Prohibiting swordfish fishing will severely impact the annual income of the longline fishermen off the California coast.

Response: According to the analyses submitted by the Council, average annual profits of the West Coast-based longline fishery targeting swordfish is estimated at $6.7 million. Assuming all the vessels ceased fishing, this would be the economic loss to the fishery. NMFS

recognizes that there will be economic consequences to the regulated industry. However, many of the longline vessels have historically fished under the Western Pacific Pelagic fishery management plan's limited entry permit and would likely to return to Hawaii to target tuna or target swordfish under the proposed management plan submitted by the Western Pacific Council.

Comment 8: NMFS cannot propose to implement a prohibition on shallow longline sets for swordfish on the high seas in the Pacific Ocean east of the 150° West Longitude because the Council rejected this alternative citing insufficient evidence to justify a prohibition.

Response: Under the Magnuson-Stevens Fishery Conservation and Management Act, NMFS may disapprove or partially approve a plan if the plan is not consistent with any applicable law. Based on the ESA section 7 consultation, NMFS concluded that the FMP as proposed by the Council was likely to jeopardize the continued existence of loggerhead sea turtles. Based on that analysis, NMFS partially disapproved the Council's plan. NMFS is now implementing this final rule pursuant to its authority under the ESA.

Comment 9: NMFS cannot rely on either the 2001 or 2002 biological opinions on the Western Pacific Pelagics Fishery Management Plan because of the order issued by the United States District Court for the District of Columbia states that NMFS cannot validly rely on either opinion in assisting the effects of a fishery on listed species or elaborating appropriate management measures.

Response: NMFS consulted separately on the FMP and concluded in its Febrary 4, 2004, biological opinion that the FMP without this regulation would likely jeopardize loggerhead sea turtles. The Court vacated the November 2002 biological opinion on the Western Pacific Pelagics Fishery Management Plan because NMFS had not treated the plaintiffs (Hawaii Longline Association) as applicants in preparation of the March 2001 biological opinion, and this procedural error affected the preparation of the November 2002 biological opinion. The Court chose not to evaluate or rule on whether the data, analysis and conclusions in those opinions were correct.

Comment 10: NMFS cannot issue an anticipatory regulatory proposal such as proposing to prohibit swordfish sets because this raises ''the specter of a foregone conclusion'' which is impermissable under the ESA.

Response: NMFS is authorized to promulgate regulations as may be appropriate to enforce provisions of the ESA. NMFS is promulgating this rule after the biological opinion concluded that the FMP was likely to jeopardize loggerhead sea turtles without this rule.

Comment 11: Data used to assess the impacts of the West Coast-based longline fishery are not sufficient to make a decision to prohibit shallow sets targeting swordfish.

Response: At the time the Council made its recommendation, there were sufficient data to determine that the fishery was taking numerous sea turtles incidental to fishing operations. In addition, the Council was aware that NMFS had significant concerns about the number of sea turtles that were expected to be captured incidentally to the continued operation of the West Coast-based pelagic longline fishery based on the severe decline and lack of recovery in loggerhead and leatherback sea turtles populations, and the extensive analyses conducted by the agency on existing threats to these populations.

Comment 12: Similarities between the West Coast-based and the Hawaii-based pelagic longline fisheries suggest that there should be similar regulatory measures to manage the two fisheries. As a result, NMFS should propose regulations similar to the emergency regulations proposed by the Western Pacific Fishery Management Council that would allow swordfish fishing at 75 percent of historic levels and the use of circle hooks with mackerel bait in place of J hooks baited with squid for the West Coast-based longline vessels.

Response: The Council is responsible for providing management and conservation recommendations that address concerns about the effect of the FMP prosecuted off the U.S. West Coast and on ocean resources caught incidentally. NMFS anticipates that the Council will consider alternative management measures similar to those proposed by the Western Pacific Council using the framework procedures in the HMS FMP. NMFS will consider any such proposals that the Council submits which might lessen the burden to fishermen while maintaining adequate protection of sea turtles. NMFS will fully support the Council in examination and selection of appropriate protective measures.

Comment 13: One commenter questioned whether the post-hooking mortality estimates used to estimate the level of impacts by the fishery are consistent with the best scientific and commercial data available as required by the ESA. In addition, the commenter requested that NMFS use the results from the post-hooking mortality workshop scheduled to convene in January.

Response: On January 15–16, 2004, a workshop on marine turtle longline post-interaction mortality was convened. Seventeen experts in the area of biology, anatomy/physiology, veterinary medicine, satellite telemetry and longline gear deployment participated in the workshop. Consideration of the workshop discussion, along with a comprehensive review of all of the information available on the issue has led to the modification of the February 2001 criteria. The February 2001 injury categories have been expanded to better describe the specific nature of the interaction. The February 2001 criteria described two categories for mouth hooking: (1) Hook does not penetrate internal mouth structure; and (2) mouth hooked (penetrates) or ingested hook. The new criteria divides the mouth hooking event into three components to reflect the severity of the injury and to account for the probable improvement in survivorship resulting from removal of gear, where appropriate, for each injury. The three components consist of: (1) hooked in esophagus at or below the heart (insertion point of the hook is not visible when viewed through the open mouth; (2) hooked in cervical esophagus, glottis, jaw joint, soft palate, or adnexa (insertion point of the hook is visible when viewed through the open mouth); and (3) hooked in lower jaw (not adnexa). The new criteria, also, separates external hooking from mouth hooking, eliminates the ''no injury'' category, and adds a new category for comatose/resuscitated sea turtles. NMFS has used these new criteria in the analyses to evaluate the effects of the West Coast-based longline fishery on listed sea turtle populations.

Comment 14: One commenter proposed that NMFS implement a single regulation to manage longline fishing in the Pacific Ocean under section 11(f) of the ESA, rather than the Magnuson-Stevens Fishery Conservation and Management Act, that would prohibit U.S. flagged vessels from engaging in shallow set swordfish style longline fishing anywhere in the Pacific, and likewise would prohibit the landing of any longline caught swordfish in any U.S. port in the Pacific.

Response: Congress passed the Magnuson-Stevens Fishery Conservation and Management Act as the primary mechanism for managing fisheries of the United States. The regional fishery management councils are to exercise sound judgment in the

stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances which will enable the States, the fishing industry, consumer and environmental organizations and other interested persons to participate in, and advise on, the establishment and administration of such plans. Clearly, Congress envisioned the Magnuson-Stevens Fishery Conservation and Management Act as the tool for NMFS to use to manage fisheries. However, where the Council process fails to address the mandates of the ESA, NMFS can excercise its authority under the ESA. Further, the Western Pacific Fisheries Management Council has proposed a regulation that would allow swordfish fishing but with modified gear that should reduce interactions.

Comment 15: One commenter believes that the proposed rule should be further modified to prohibit all pelagic longlining, regardless of whether it targets tuna or swordfish, because pelagic longline fishing has not demonstrated an elimination of all mortality to leatherback sea turtles. An alternative to completely banning longline gear would be to implement a time and area closure that is 100 percent effective at eliminating leatherback sea turtle mortality.

Response: Based on the analyses in the biological opinion evaluating the effects of the FMP on listed species, including the leatherback sea turtle, NMFS concluded that longline fishing targeting tuna east of the 150° W. long. would not jeopardize the continued existence of leatherback sea turtles. As a result, NMFS has determined that a complete ban on all longline fishing east of the 150° W. long. is not warranted.

Comment 16: Unless gear modifications can eliminate the mortality of leatherback sea turtles, a reduction of 60 percent, 70 percent, or even 90 percent is not sufficient.

Response: Under the ESA, NMFS is mandated to insure that any action authorized, funded, or carried out by an agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species. After completing the section 7 consultation, NMFS concludes that some leatherback mortality will not jeopardize the continued existence of the species.

Comment 17: NMFS should close the West Coast-based longline fishery immediately via the immediate promulgation of an emergency regulation rather than through an extended notice and comment rulemaking process.

Response: NMFS undertook what it determined to be the preferable method of ensuring the fishery is managed in a manner that avoids the likelihood of jeopardizing the continued existence of Pacific sea turtle populations while providing due process.

Comment 18: Many commmenters urged NMFS to take a more proactive role in promoting international agreements that would close these waters to vessels from other countries that may be catching and killing leatherback and other sea turtles while fishing for swordfish.

Response: NMFS is dedicated to protecting and preserving living marine resources and their habitat through scientific research, management, enforcement, and international agreements. Recently, NMFS partnered with the Inter-American Tropical Tuna Commission to conduct training workshops for sea turtle bycatch reduction, attended by over 800 fishermen throughout Ecuador. The agency will participate in similar workshops in Costa Rica this spring. In addition, NMFS continues to promote international collaboration and outreach efforts to share research information on possible new conservation measures for sea turtles. These are all very important issues for NMFS.

West Coast-based Fishing Effort

At the time when NMFS issued the proposed rule, preliminary data suggested that the West Coast-based longline fishing fleet would set approximately 1.55 million hooks each calendar year. To evaluate whether this preliminary estimate in the FMP EIS was the best available information, NMFS reviewed and analyzed the HSFCA logbook data to determine the number of active vessels and the number of reported sets and hooks. Comparing these data with the NMFS observer program data and records, NMFS determined that the preliminary estimates were too high. As a result, NMFS corrected the information about the number of active vessels during calendar years 2002 and 2003, and decreased the estimated number of expected fishing effort to one million hooks.

Estimated Sea Turtle Take Levels

There are two sets of data from which rates of sea turtle interactions in the West Coast-based pelagic longline fishery could be derived: (1) Data from observers on Hawaii-based longline vessels operating in the same areas as the West Coast-based pelagic longline vessels; and (2) data from observers on West Coast-based pelagic longline vessels. Vessels in the West Coast-based pelagic longline fishery fish in the same manner, and frequently in the same area, as vessels that had been targeting swordfish in the Hawaii-based longline fishery. Because of the strong similarities between these two fisheries and the limited amount of observer data available for the West Coast-based pelagic longline fleet alone, NMFS concluded that using the combined observer data from the Hawaii-based and West Coast-based longline fleets for fishing east of 150° W. long. is more representative of the sea turtle interaction rates that can be expected to occur throughout the West Coast-based pelagic longline fishery.

Using the combined observer data, NMFS developed estimates of sea turtle take levels that would result from the West Coast-based pelagic longline fishery. NMFS assumed that the West Coast-based pelagic longline fleet deploys one million hooks east of 150° W. long., NMFS estimates the fishery under the FMP would result in the annual capture of 126 to 195 loggerhead, 23 to 57 leatherback, and 1 to 11 olive ridley sea turtles. Of these, NMFS estimates that the West Coast-based pelagic longline fishery under the management measures proposed by the Council would result in the annual mortality of 42 to 91 loggerhead sea turtles, 4 to 25 leatherback sea turtles, and 1 to 4 olive ridley sea turtles.

Impacts to Sea Turtle Populations

Based on the analyses in the ESA section 7 consultation, NMFS concluded that if the fisheries under the FMP included shallow longline sets, the FMP is likely to jeopardize the continued existence of loggerhead sea turtles. However, when analyzed in conjunction with the prohibition of shallow longline sets east of the 150° West long. by West Coast-based pelagic longline vessels, the final conclusion for loggerhead sea turtles is that the fisheries operating under the FMP are not likely to jeopardize the continued existence of loggerhead sea turtles.

As a result, NMFS is proposing to implement restrictions in the West Coast-based pelagic longline fishery in waters east of 150° W. long. to conserve leatherback and loggerhead sea turtles as required under the ESA. Under this final rule, West Coast-based pelagic longline vessels will be prohibited from making shallow longline sets on the high seas in the Pacific Ocean east of 150° W. long. The prohibition of shallow longline sets west of 150° W. long. proposed under the FMP would also apply.

There are several other factors that may ultimately affect the management of the West Coast-based pelagic longline fishery. As noted, the FMP contains framework procedures by which adjustments in conservation and management measures may be made through regulatory amendments if warranted by available information and conditions. Further, the FMP recognizes a potential for exempted fishing permits that allow testing of alternative gear and/or techniques that might demonstrate that longline fishing can be conducted in a manner that will not adversely affect protected species or that will result in lower levels of bycatch. NMFS anticipates that the Council will review information as it is generated to consider possible changes in longline fishing regulations and may propose changes. NMFS will consider any such proposals.

Classification

NMFS has determined that this final rule is consistent with the ESA and other applicable laws.

The impacts of this action and alternatives are evaluated in accordance with the National Environmental Policy Act as the High Seas Pelagic Longline Alternative 3 in the EIS prepared by the Council (see **ADDRESSES**).

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

This final rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

A combined RIR/IRFA was prepared that describes the economic impacts of the Council's FMP, which includes an analysis of this proposed action as High Seas Pelagic Longline Alternative 3. The RIR/IRFA is available from the Council (see **ADDRESSES**). No comments were received on the RIR/IRFA. The FRFA is available from NMFS (see **ADDRESSES**).

A summary of the RIR/RFA follows:

The **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this rule provide a description of the action, why it is being considered, and the legal basis for this action. That information is not repeated here.

A fish-harvesting business is considered a ''small'' business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $5.0 million.

This regulation imposes controls on the fleet of approximately 21 longline vessels that fish principally out of California ports for swordfish and associated species. All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the rule. For most of the longline vessels involved, swordfish caught by longline gear makes up more than half of the total revenue from fish sales. Table 1 presents total ex-vessel revenue and dependence on swordfish landings for the 38 West coast-based vessels with high seas pelagic longline swordfish landings in 2001, broken down by the number of vessels with varying percent dependence on swordfish. NMFS believes these data are representative of 2002 fishing vessel revenues.

TABLE 1: TOTAL EX-VESSEL REVENUE AND DEPENDENCE ON SWORDFISH FOR 38 WEST-COAST-BASED VESSELS WITH HIGH SEAS PELAGIC LONGLINE LANDINGS IN 2001.

Number of Vessels	Dependence on High Seas Longline Caught Swordfish (category of swordfish revenue/total revenue)	Average Total Ex-vessel Revenue ($/vessel)	Average Percent Longline Swordfish (swordfish revenue/ total revenue)
4	<50%	$228,951	32.57%
3	50-70%	$170,067	60.99%
3	>70-80%	$222,089	76.66%
4	>80-90%	$258,335	86.77%
13	>90-95%	$182,211	93.26%
11	>95%	$219,885	97.57%

The impacts of alternatives to this action were evaluated in the RIR/IRFA. Three alternatives were considered for managing the high seas pelagic longline fishery. Under Alternative 1 (Status Quo), the FMP would not impose regulations on this fishery. The Council assumes that in the short-run, the fishery would continue to operate as it currently does, earning average annual profits of $6.7 million. However, in the long-run, the Council expects that regulations would be established under other authorities, due to concerns over unregulated bycatch, such that over time the fishery would disappear, and long-run profits would become zero as the fishery was phased out.

Alternative 2 (Council Proposed Action) would maintain the fishery, allowing fishermen to continue targeting swordfish east of 150° W. long., but impose some additional costs on longliners targeting swordfish on the high seas. Short-run average annual profits would remain at $6.7 million, minus the cost of adopting turtle and sea bird mitigation measures, accommodating observers, and using monitoring equipment. NMFS is developing guidelines for the design and performance standards of equipment required for the handling of incidentally caught sea turtles. The required tools can be purchased, for an estimated maximum cost of $2,000 per vessel, but vessel owners may also be able use the guidelines to fabricate the equipment with lower cost materials. Vessel owners do not pay an observer's salary, but do bear costs associated with providing room and board for the observer. Additionally, carrying an observer may increase the cost of insurance that the vessel carries. Vessel monitoring equipment costs approximately $2,000 to purchase and $500 to install, and would require annual maintenance estimated to cost approximately 20 percent of the purchase price per year. However, despite the equipment costs, the fishery would be able to land swordfish, and so over 25 years, the present value of long-run profits relative to the status quo would range between $78 and $105 million, using 7 percent and 4 percent discount rates, respectively. NMFS is not adopting the Council's proposed action because it does not adequately reduce the incidental capture and mortality of loggerhead sea turtles.

Alternative 3, which is the action adopted by NMFS, would prohibit fishermen from targeting swordfish east of 150° W. long. Swordfish are the target species of this fishery. This would effectively eliminate all but incidental swordfish landings and the short- and long-run profits currently associated with landing swordfish ($6.7 million, and $78 million to $105 million, respectively), at least until alternative fishing opportunities are identified. This loss assumes that all vessels in this fishery cease fishing, although longline fishing targeting tuna out of West Coast ports or Hawaii may be an alternative. However, current participants in the fishery indicate that without being able to target swordfish, the high seas longline fishery originating from West Coast ports would cease to exist.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS conferred with the States of California, Oregon, and Washington regarding this rule. NMFS has met with State Council and Plan Development Team representatives throughout the FMP development process. No comments were received

from the States opposing the prohibition of shallow sets east of the 150° W. long. and no objection has been raised by the Council. NMFS intends to continue engaging in informal and formal contacts with these States during the implementation of this final rule and amendments to the FMP.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: March 5, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 223 is amended to read as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.206, a new paragraph (d)(9) is added to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(9) *Restrictions applicable to Pacific pelagic longline vessels.* In addition to the general prohibitions specified in § 600.725 of Chapter VI, it is unlawful for any person who is not operating under a western Pacific longline permit under § 660.21 to do any of the following on the high seas of the Pacific Ocean east of 150° W. long. and north of the equator (0° N. lat.):

(i) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear.

(ii) Possess a light stick on board a longline vessel. A light stick as used in this paragraph is any type of light emitting device, including any fluorescent *glow bead*, chemical, or electrically powered light that is affixed underwater to the longline gear.

(iii) An operator of a longline vessel subject to this section may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing east of 150° W. long. and north of the equator (0° N. lat.).

(iv) Fail to employ basket-style longline gear such that the mainline is deployed slack when fishing.

(v) When a conventional monofilament longline is deployed by a vessel, no fewer than 15 branch lines may be set between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats.

(vi) Longline gear must be deployed such that the deepest point of the main longline between any two floats, i.e., the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

[FR Doc. 04–5553 Filed 3–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 030504A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area 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 Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allocation of the 2004 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 8, 2004, through 1200 hrs, A.l.t., June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 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 A season allocation of the 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area is 1,017 metric tons (mt) as established by the 2004 final harvest specifications of groundfish for the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allocation of the 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 817 mt, and is setting aside the remaining 200 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 Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds 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)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of the A season allocation of the 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component of the Western Regulatory Area of the GOA.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

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