



## **Small Entity Compliance Guide for the April 2004 Changes to the Regulations Governing the Pelagic Fisheries of the Western Pacific Region**

**July 9, 2004**

This small entity compliance guide is issued by the National Marine Fisheries Service (NMFS, also known as “NOAA Fisheries”) in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996.

This guide provides information on how to comply with certain regulations that govern the conduct of vessels that participate in the pelagic fisheries of the western Pacific region, including the federal waters around Hawaii, Guam, Northern Mariana Islands, American Samoa, and certain other U.S. island possessions in the Pacific.

This guide covers only the regulatory changes issued by NOAA Fisheries on April 2, 2004, and only a summary of those changes is provided here.

Some of the new regulations became effective April 2, 2004; others became effective May 3, 2004.

For the official regulatory changes, see the final rule published in the *Federal Register* on April 2, 2004 (volume 69, pages 17329-17354).

For the complete set of official regulations that have been modified, see Title 50, Part 660, of the *Code of Federal Regulations*.

Regulations are subject to change, so this guide may become out of date. Any discrepancy between the contents of this guide and regulations in the *Federal Register* will be resolved in favor of the regulations published in the *Federal Register*.

The regulations summarized here apply to owners of, operators of, and other persons aboard:

- Vessels registered for use under Hawaii longline limited access permits (called “Hawaii-permitted longline vessels” here);
- vessels registered for use under longline general permits (called “general-permitted longline vessels” here);
- non-longline vessels using hooks to target pelagic species (called “non-longline pelagic vessels” here); and
- vessels registered for use under receiving vessel permits (called “receiving vessels” here, but also known as “transshipping vessels”).

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## **1 Changes that apply to both Hawaii-permitted longline vessels and general-permitted longline vessels**

Permitted longline vessels are no longer prohibited from:

- fishing with longline gear during April and May in the area bounded by the equator and 15° N latitude and by 145° W and 180° longitude, and they are no longer prohibited during April and May from landing or transshipping pelagic species harvested by longline gear in that area;
- fishing for swordfish (*Xiphias gladius*) using longline gear north of the equator;
- possessing or deploying float lines shorter than 20 meters when fishing north of the equator;
- possessing light sticks (“light stick” means any light-emitting device affixed underwater to the longline gear) during trips that include fishing north of the equator;
- setting fewer than 15 branch lines between any two floats when fishing north of the equator (or 10 if using basket-style gear rather than conventional monofilament longline);
- making a set such that the deepest point of the main longline between any two floats is less than 100 meters;
- landing or possessing more than 10 swordfish from a trip that included fishing north of the equator.

Note that although the above swordfish-related prohibitions have been eliminated, they have been replaced with a set of new swordfish-related restrictions on Hawaii-permitted longline vessels, described in Section 2.

## **2 Changes that apply only to Hawaii-permitted longline vessels**

- NOAA Fisheries will no longer limit the registration of vessels with Hawaii longline limited access permits to the month of October.
- Vessel owners and operators are required to annually attend and be certified for completion of a protected species workshop conducted by NOAA Fisheries. Vessel operators must have on board, while longline fishing, a valid protected species workshop certificate, and vessel owners must maintain and have on file a valid protected species workshop certificate in order to maintain or renew their vessel registration. (These requirements are unchanged.)
- The new regulations introduce an important distinction between “deep-setting” and “shallow-setting,” and there are important differences in the regulations that apply to each type of set. Deep-setting and shallow-setting are defined using four criteria:

In order for a set to be a deep-set, all four of the following criteria must be met:

1. Float lines: All float lines must be at least 20 meters long
2. Branch lines: There must be at least 15 branch lines between any two floats (except basket-style gear, which may have as few as 10)
3. Light sticks: No light sticks may be used (“light stick” means any light-emitting device affixed underwater to the longline gear)
4. Swordfish: It must not result in more than 10 swordfish being possessed or landed at any time during the trip

Any set that does not meet all four of the above criteria is a shallow-set.

The definition of deep-set corresponds roughly with the type of sets generally used to target tuna, and the definition of shallow-set corresponds roughly with the type of sets generally used to target swordfish. However, the regulations distinguish between deep-sets and shallow-sets, as defined above, not between tuna-directed and swordfish-directed sets.

### **2.1 Requirements that apply to both deep-setting and shallow-setting trips**

- When notifying NOAA Fisheries (at least 72 hours) in advance of the start of a fishing trip, the vessel operator or designated agent must declare the trip type (deep-set or shallow-set), along with the other required trip information.
- During a given trip, only sets of the type declared to NOAA Fisheries prior to the trip (deep-set or shallow-set) may be made; no switching or mixing of set types is allowed.
- A number of specified “dehookers” and related items that meet specific minimum design and performance standards must be carried on board the vessel (more details below). These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles, and if it is done by cutting the line, the line must be cut as close to the hook as possible (see Question 6.6).

## Details: dehooker requirements

See the regulations (50 CFR 600.32(a)(4)) for a description of the minimum performance and design standards for the required dehookers and related items. A summary list of the required items, with sample models that meet the minimum design and performance standards, follows (reference to trade names does not imply endorsement by NOAA Fisheries).

Required Item	Sample model
Long-handled line clipper	Arceneaux line clipper; LaForce line cutter
Dip net	ARC 12-ft (3.66 m) Breakdown Lightweight Dip Net Model DN6P (6 ft (1.83 m)); ARC Model DN08 (8 ft (2.44 m)); ARC Model DN 14 (12 ft (3.66 m)); ARC Net Assembly & Handle (Model DNIN); Lindgren-Pitman, Inc. Model NMFS Turtle Net
(i) Long-handled dehooker for ingested hooks	ARC Pole Model Deep-Hooked Dehooker (Model BP11)
(ii) Long-handled dehooker for external hooks	ARC Model LJ6P (6 ft (1.83 m)); ARC Model LJ36; or ARC Pole Model Deep-Hooked Dehooker (Model BP11); ARC 6 ft (1.83 m) Pole Big Game Dehooker (Model P610)
(iii) Long-handled device to pull an "inverted V"	ARC Model LJ6P (6 ft); Davis Telescoping Boat Hook to 96 inch (2.44 m) (Model 85002A); West Marine #F6H5 Hook and #F6-006 Handle
(iv) Tire	Any standard automobile tire free of exposed steel belts
(v) Short-handled dehooker for ingested hooks	ARC 17-inch (43.18-cm) Hand-Held Bite Block Deep-Hooked Turtle Dehooking Device (Model ST08)
(vi) Short-handled dehooker for external hooks	ARC Hand-Held Large J-Style Dehooker (Model LJ07); ARC Hand-Held Large J-Style Dehooker (Model LJ24); ARC 17-inch (43.18-cm) Hand-Held Bite Block Deep-Hooked Turtle Dehooking Device (Model ST08); Scotty's Dehooker
(vii) Long-nose or needle-nose pliers	12-inch (30.48-cm) S.S. NuMark Model #030281109871; any 12-inch (30.48-cm) stainless steel long-nose or needle-nose pliers
(viii) Wire or bolt cutters	H.K. Porter Model 1490 AC
(ix) Monofilament line cutters	Jinkai Model MC-T
(x) Mouth openers and gags (at least two from A-G):	
(A) Block of hard wood	Any block of hard wood meeting the standards, including Great American Manufacturing Inc. Curved Shoe Handle Wire Brush with Beveled Scraper (Model SS0416), with wires and scraper removed; Olympia Tools Long-Handled Wire Brush and Scraper (Model 974174), with wires and scraper removed.
(B) Set of three canine mouth gags	Jorvet Model #4160, 4162, and 4164
(C) Set of two sturdy canine chew bones	Nylabone (a trademark owned by T.F.H. Publications, Inc.); Gumabone (a trademark owned by T.F.H. Publications, Inc.); Galileo (a trademark owned by T.F.H. Publications, Inc.)
(D) Set of two rope loops covered with hose	Any set of two rope loops covered with hose meeting standards
(E) Hank of rope	Any size soft braided nylon rope, provided it creates a hank of rope 2 - 4 inches (5.08 cm - 10.16 cm) in thickness
(F) Set of four PVC splice couplings	A set of four Standard Schedule 40 PVC splice couplings (1-inch (2.54-cm), 1 1/4-inch 3.175-cm), 1 1/2 inch (3.81-cm), and 2-inch (5.08-cm)
(G) Large avian oral speculum	Webster Vet Supply (Model 85408); Veterinary Specialty Products (Model VSP 216-08); Jorvet (Model J-51z); Krusse (Model 273117)

### **2.1.1 Fishing north of 23° N latitude**

If deep-setting or shallow-setting north of 23° N latitude:

- In order to reduce interactions with seabirds, completely thawed bait must be used, and it must be dyed blue to an intensity level specified by a color quality control card issued by NOAA Fisheries (these requirements are unchanged).
- In order to reduce interactions with seabirds, while setting or hauling longline gear, fish or fish parts (offal) or spent bait must be discharged on the opposite side of the vessel from where the longline gear is being set or hauled (these requirements are unchanged).

### **2.2 Requirements that apply only to deep-setting**

On trips declared to NOAA Fisheries as being deep-set trips:

- There may not be on board any light stick.
- There may not be on aboard any float line shorter than 20 meters.
- No more than 10 swordfish may be possessed or landed from the trip.

#### **2.2.1 Deep-setting north of 23° N latitude**

If deep-setting north of 23° N latitude:

- When using monofilament main longline, a line setting machine or line shooter must be used to set the main longline, and weights of at least 45 grams must be attached to each branch line, within 1 meter of the hook. When using basket-style longline gear, the main longline must be deployed slack to maximize its sink rate. (These requirements are unchanged.)

### **2.3 Requirements that apply only to shallow-setting**

#### **2.3.1 Shallow-setting north of the equator**

If shallow-setting north of the equator:

- Only circle hooks sized 18/0 or larger, with 10° offset, may be used.
- Only mackerel-type bait may be used (more details below).
- There must be on board one valid shallow-set certificate for each shallow-set that is made north of the equator (more details below).

- Shallow-setting north of the equator is prohibited for the remainder of the calendar year once the shallow-set component of the fishery is closed as a result of either of the two sea turtle interaction limits being reached (more details below).

### **Details: bait requirements**

The required bait type is defined as follows:

Mackerel-type bait means a whole fusiform [“fusiform” means tapering toward each end] fish with a predominantly blue, green, or grey back and predominantly grey, silver, or white lower sides and belly.

A number of fish species meet this definition, such as:

- Members of the Carangidae family (jacks), including scads and jack mackerels (e.g., *Trachurus* spp. *Selar* spp., and *Decapturus* spp.).
- Members of the Scrombridae family (tunas and mackerels), including chub mackerel, or *saba* (*Scomber japonicus*).
- Members of the Scomberesocidae family (sauries), including Pacific sauri, or *sanma* (*Cololabis saira*).
- Members of the Clupeidae family (herrings and sardines).

### **Details: shallow-set certificates**

There is a maximum annual limit of 2,120 on the number of shallow-sets that may be made north of the equator by the fleet as a whole.

Each calendar year, the annual limit on shallow-sets is divided and distributed among interested permit holders according to the number of permits held, in the form of “shallow-set certificates,” each valid for a single shallow-set any time during the year. A share of certificates is given to each permit holder who sends a written notice of interest to NOAA Fisheries no later than November 1 (for 2004, May 1) prior to the start of the calendar year (see Question 6.2 for details).

One valid shallow-set certificate must be on board the vessel for each shallow-set made north of the equator during the trip, and the vessel operator must submit to NOAA Fisheries within 72 hours of each landing, attached to the corresponding logbook form, one valid shallow-set certificate for every shallow-set made north of the equator during the trip. Photocopies and facsimiles of certificates are not acceptable.

Shallow-set certificates may be transferred, but only to holders of Hawaii longline limited access permits.

### **Details: sea turtle interaction limits and shallow-set fishery closure**

There are fleet-wide maximum annual limits established on the numbers of physical interactions between leatherback and loggerhead sea turtles and Hawaii-permitted longline vessels while engaged in shallow-setting. The annual limits are 16 leatherbacks and 17 loggerheads.

If in a given year NOAA Fisheries determines that either of the two limits has been reached, the shallow-set component of the fishery will be closed for the remainder of the calendar year. The closure date will be at least seven calendar days after NOAA Fisheries files for publication at the Office of the *Federal Register* a notice advising of the closure. NOAA Fisheries will also notify permit holders of the closure by mail, fax, or e-mail (see Question 6.5).

Once the shallow-set component of the fishery is closed, shallow-setting north of the equator will be prohibited for the remainder of the calendar year.

#### **2.3.2 Shallow-setting north of 23° N latitude**

If shallow-setting north of 23° N latitude:

- Longline gear may only be deployed during the nighttime; specifically, the deployment must be started no earlier than one hour after local sunset and completed no later than local sunrise. Also, only the minimum vessel lights necessary for safety may be used while deploying the gear.



### **3 Changes that apply only to general-permitted longline vessels**

- Owners and operators of general-permitted longline vessels are no longer required to carry line clippers, dip nets, and wire or bolt cutters for the purpose of disengaging hooked or entangled sea turtles.<sup>1</sup>
- Operators of general-permitted vessels are no longer required to annually attend and be certified for completion of a protected species workshop and to have on board, while longline fishing, a valid protected species workshop certificate issued by NOAA Fisheries.<sup>1</sup>

### **4 Changes that apply to non-longline pelagic vessels**

- Owners and operators of non-longline pelagic vessels are no longer required to carry line clippers and wire or bolt cutters for the purpose of disengaging hooked or entangled sea turtles, and they are no longer required to use specified methods to handle, resuscitate, and release sea turtles.<sup>1</sup>

### **5 Changes that apply to receiving vessels**

- Receiving vessels are no longer prohibited during April and May from receiving, landing, or transshipping from another vessel pelagic species harvested by longline gear in the area bounded by the equator and 15° N latitude and by 145° W and 180° longitude.

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<sup>1</sup> The Western Pacific Fishery Management Council is considering management action to reinstate this requirement; if such a recommendation is approved and implemented by NOAA Fisheries, it would once again be required.

## **6 Questions and answers**

### **6.1 Do I need to have a vessel in order to receive shallow-set certificates?**

No, any holder of a Hawaii longline limited access permit, regardless of whether a vessel is registered for use under the permit, may request and obtain shallow-set certificates, provided that the permit holder holds the permit on the November 1 just prior to the calendar year of interest and a written request is provided to NOAA Fisheries before the deadline (see Question 6.2).

### **6.2 How do I obtain shallow-set certificates?**

In order for a holder of a Hawaii longline limited access permit to receive shallow-set certificates for a given calendar year, the permit holder must notify NOAA Fisheries in writing (by mail, fax, or in person) no later than November 1 prior to the start of the year. The notification must include the permit holder's name. It should also include the permit number, the signature of the permit holder (or name and signature of an authorized agent), and, if applicable, the vessel name. The request for shallow-set certificates should be sent to:

Regional Administrator  
NMFS, Pacific Islands Regional Office  
Attention: swordfish certificates  
1601 Kapiolani Blvd., Suite 1110  
Honolulu, HI 96814-4700  
Fax: (808) 973-2941

No later than December 1 of each year, NOAA Fisheries will send the shallow-set certificates to the permit holder's address on record. If the permit holder would like the certificates to be sent to another person or address, a request for alternative delivery arrangements must be made prior to the deadline for requesting certificates.

### **6.3 What if I receive too few shallow-set certificates to make it worth fishing?**

The greater the number of permit holders that request shallow-set certificates for a given year, the fewer the number of certificates that each requesting permit holder will receive. After the distribution of certificates by NOAA Fisheries, the certificates may be freely transferred among holders of Hawaii longline limited access permits, but they expire at the end of the year.

### **6.4 What do I do if I lose my shallow-set certificates?**

Once NOAA Fisheries has determined that the certificates have been delivered to the permit holder or designated recipient, NOAA Fisheries will not replace them.

### **6.5 How will I find out if the shallow-set component of the fishery is closed?**

If either of the two sea turtle interaction limits is reached in a given year, NOAA Fisheries will publish a fishery closure notice in the *Federal Register* and will contact all holders of Hawaii

longline limited access permits by mail, fax, or e-mail, giving at least seven calendar days advance notice of the closure. NOAA Fisheries will rely on the contact information provided in the permit applications for this purpose. NOAA Fisheries is not required to contact the vessel operators, so the permit holder will be responsible for ensuring that his or her vessel operator is made aware of the closure.

## **6.6 How do I use the dehookers on hooked and entangled sea turtles?**

NOAA Fisheries will be providing further guidance on how to use the required dehookers at the protected species workshops. Owners and operators of Hawaii-permitted longline vessels are required to attend these workshops on an annual basis, and crew members are also encouraged to attend. NOAA Fisheries will also be conducting occasional dockside classes in dehooking techniques that owners, operators, and crew are encouraged, but not required, to attend. Other instructional materials are also available from NOAA Fisheries.

## **6.7 What are the penalties for violations of these regulations?**

Penalties are determined on a case-by-case basis; they can include significant civil penalties and permit sanctions. The Western Pacific Pelagic Fishery Penalty Schedule can be found at:

<http://www.gcel.noaa.gov/schedules/index.html>

## **6.8 How can I get further information?**

Call NOAA Fisheries:

In American Samoa: (684) 633-5598  
In Hawaii: (808) 973-2937

Write, fax, or visit NOAA Fisheries:

NMFS Pacific Islands Regional Office  
Sustainable Fisheries Division  
1601 Kapiolani Blvd., Suite 1110  
Honolulu, HI 96814-4700  
Fax: (808) 973-2941

Visit the web site of the Pacific Islands Regional Office of NOAA Fisheries:

<http://swr.nmfs.noaa.gov/pir/>

See the *Federal Register* notice of the final rule that is summarized in this guide (April 2, 2004, volume 69, pages 17329-17354).

See the *Code of Federal Regulations* (particularly Title 50, Section 660).