

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. Furthermore, this rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action authorizes State requirements for the purpose of RCRA Section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. Law 104-4). For the same reason, this action also does not have implication within the meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste management program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and does not make decisions based on environmental health or safety risks. This action does not include environmental justice related issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA section 3006(b), EPA grants a State's application for

authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective August 12, 2002.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 3, 2002.

Laura Yoshii,

Acting Regional Administrator, Region 9.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020311051-2135-02; I.D. 022002C]

RIN 0648-AN75

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Pelagic Longline Gear Restrictions, Seasonal Area Closure, and Other Sea Turtle Take Mitigation Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) that implements the reasonable and prudent alternative of the March 29, 2001, Biological Opinion (BiOp) issued by NMFS under the Endangered Species Act (ESA). This rule is intended to reduce interactions between endangered and threatened sea turtles and pelagic fishing gear and to mitigate the harmful effects of interactions that occur. The rule applies to the owners and operators of all vessels fishing for pelagic species under Federal western Pacific limited access longline permits (longline vessels) within the U.S. exclusive economic zone (EEZ) and the high seas around Hawaii, as well as those fishing for pelagic species with other types of hook-and-line gear (non-longline pelagic vessels) within the EEZ around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands (western Pacific region). This rule prohibits the targeting of swordfish north of the equator by longline vessels, closes all fishing to longline vessels during April and May in waters south of the Hawaiian Islands (from 15° N. lat. to the equator, and from 145° W. long. to 180° long.), prohibits the landing or possessing of more than 10 swordfish per fishing trip by longline vessels

fishing north of the equator, allows the re-registration of vessels to Hawaii longline limited access permits only during the month of October, requires all longline vessel operators to annually attend a protected species workshop, and requires utilization of sea turtle handling and resuscitation measures on both longline vessels and non-longline pelagic vessels using hook-and-line gear.

DATES: Effective June 9, 2002, except for the amendments to § 660.22, paragraphs (hh) and (ii), which are effective June 14, 2002, and § 660.32, newly added paragraph (a)(2) and revised paragraph (a)(3), which are effective July 12, 2002.

ADDRESSES: Copies of the Final Environmental Impact Statement for the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FEIS) and the Record of Decision (ROD) for this FEIS are available from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700. The ROD is also available at <http://www.nmfs.noaa.gov/sfpa>. Copies of a regulatory impact review and final regulatory flexibility analysis (FRFA) prepared for this action may be obtained from Ms. Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, Suite 1400, 1164 Bishop Street, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, at 808-973-2937.

SUPPLEMENTARY INFORMATION: On April 29, 2002, NMFS published a proposed rule (67 FR 20945) intended to reduce interactions between endangered and threatened sea turtles and pelagic fishing gear and to mitigate the harmful effects of interactions that occur. This action implements the reasonable and prudent alternative of the March 29, 2001, BiOp issued by NMFS on the FMP. The preamble of the proposed rule presented background information on the BiOp and implementation of its sea turtle take mitigation measures. This information is not repeated here. A comprehensive assessment of the environmental impacts of fishing activities conducted under the FMP is found in the March 30, 2001, FEIS (See **ADDRESSES**).

This final rule implements the following measures applicable to owners and operators of all vessels registered for use under either a Hawaii longline limited access permit or a longline general permit (longline vessels): (a) Prohibit longline vessels from using longline gear to target swordfish north of the equator; (b) require longline gear to be deployed

such that the deepest point of the main longline between any 2 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 when fishing north of the equator; (c) require that a minimum of 15 branch lines are used between any 2 floats on vessels using monofilament gear when fishing north of the equator; (d) require that a minimum of 10 branch lines are deployed between any 2 floats on vessels using basket-style longline gear when fishing north of the equator; (e) require that longline vessel operators possess and employ float lines of at least 20 m (65.6 ft) to suspend the mainline beneath any float on fishing trips north of the equator; (f) prohibit the possession of a lightstick or any artificial light that may be used as a fish lure, e.g., glow bead, on board a longline vessel on fishing trips north of the equator; (g) prohibit the landing or possessing of more than 10 swordfish per trip by longline vessels fishing north of the equator; (h) prohibit fishing by longline vessels from April 1 through May 31 in the area bounded on the south by the equator, on the west by 180° long., on the east by 145° W. long., and on the north by 15° N. lat.; (i) allow the processing of applications for the re-registration of a vessel that has been de-registered from a Hawaii longline limited access permit after March 29, 2001, only during the month of October and require that applications must be received or post-marked between September 15 and October 15 to allow sufficient time for processing; and (j) require operators of longline vessels to annually attend a protected species workshop conducted by NMFS.

This final rule uses slightly different wording from the current emergency rule in place for the requirement that float lines used to suspend the mainline beneath floats be longer than 20 m (65.6 ft) when longlining north of the equator (see § 660.33(b)). The revision clarifies that vessel operators may not maintain on board the vessel multiple shorter float lines and claim the lines will be fastened together to form a line exceeding 20 m when or if deployed. The revised wording clarifies that the restriction applies not just to float lines when actually deployed, but also to float lines that are on board a permitted vessel. Also, the prohibition on the use of lightsticks is clarified to mean any type of light emitting device, including any fluorescent "glow bead," chemical, or electrically powered light that is affixed underwater to the longline gear.

This final rule also: (k) Requires gear retrieval to cease if a sea turtle is discovered hooked or entangled on a

longline during gear retrieval, until the turtle has been removed from the gear or brought onto the vessel's deck; (l) requires operators of all "large" longline vessels (those with a freeboard of 3 ft (0.9 m) or more) to, if practicable, use a dip net meeting NMFS' specifications as prescribed in 50 CFR 660.32 to hoist a sea turtle onto the deck to facilitate the removal of the hook or to revive a comatose sea turtle (operators of all "small" longline vessels, i.e., those with a freeboard of less than 3 ft or 0.9 m, are required to, if practicable, ease a sea turtle onto the deck by grasping its carapace (shell) or flippers).

In addition, the operators of all longline vessels within the EEZ and the high seas around Hawaii, and non-longline pelagic fishing vessels fishing with hook-and-line within EEZ waters of the western Pacific region, are required to: (m) Carry and use line-clippers to cut fishing line from hooked or entangled sea turtles (operators of "large" vessels, i.e., those with a freeboard of more than 3 ft or 0.9 m, are required to use line clippers meeting NMFS' performance standard and operators of "small" vessels, i.e., those with a freeboard of 3 ft or 0.9 m or less, must carry and use either a line cutter that meets NMFS' performance standard, or one that is more appropriate to the size and configuration of the fishing vessel, but in either case this line clipper must be capable of cutting the vessel's fishing line or leader within approximately 1 ft of the eye of an embedded hook); (n) carry and use wire or bolt cutters capable of cutting through fishing hooks to facilitate cutting of hooks embedded in sea turtles; (o) remove all hooks from sea turtles as quickly and carefully as possible; however, if a hook cannot be removed, cut the line as close to the hook as possible; (p) handle all incidentally taken sea turtles brought aboard for dehooking and/or disentanglement in a manner to minimize injury and promote post-hooking survival (if a sea turtle is too large or hooked in such a manner to preclude safe boarding without causing further damage/injury to the turtle, use line-clippers to clip the line and remove as much line as possible prior to releasing the turtle); and (q) where practicable, bring comatose sea turtles on board the vessel and perform resuscitation as prescribed in 50 CFR §§ 223.206 (d)(1), 660.22, and 660.32.

Comments and Responses

Two letters were received commenting on the proposed rule.

Comment 1: The proposed rule should not be implemented because it is

based on an unlawfully prepared, substantively flawed, and outdated BiOp and relies upon the flawed analysis contained in the FEIS.

Response: NMFS believes that the March 29, 2001, BiOp represents the best available science concerning the status of endangered and threatened sea turtles. Accordingly, NMFS believes that the mitigation measures contained in the BiOp and implemented through this final rule will protect and conserve listed sea turtles taken in the U.S. pelagic fisheries of the western Pacific region. Taking no action at this time would allow a lapse in protection of sea turtles and would not ensure that these fisheries avoid the likelihood of jeopardizing the turtles, as required under the ESA.

Comment 2: The proposed rule would not avoid the likelihood that the Hawaii-based longline fleet would jeopardize the continued existence of listed sea turtles. NMFS observer data show that from January 1 through December 31, 2001, 23 sea turtle interactions occurred in the Hawaii-based longline fishery. Therefore, additional restrictions on the fishery are warranted, such as total closure of the fishery from April 1 through May 31 and closure of the area south of the Hawaiian Islands (16 N. lat. to the equator and from 145° W. long. to 180° long.) from mid-January through mid-June of each year.

Response: NMFS believes that this final rule will adequately conserve sea turtles. Although NMFS observer data documented 23 interactions with sea turtles between January 1 and December 31, 2001, observer data since April 2001 showed that interim turtle mitigation measures imposed in April 2001 had reduced the observed takes to only 3 turtles (2 olive ridleys, 1 green, no leatherback or loggerhead turtles) through December 2001. The observer coverage on Hawaii-based pelagic longline limited access vessels from April through December 2001, ranged from 15 to 22 percent. In February and March of 2002, observers reported longline gear interactions with 3 loggerhead turtles north of 26° N. lat. As a result, NMFS instituted additional emergency restrictions on April 5, 2002, that banned longline fishing north of 26° N. lat. and limiting the possession or landing to no more than 10 swordfish per fishing trip. The swordfish trip limit is included in this final rule. In the area south of 26° N. lat.—an area where fishermen primarily fish for tuna since April 2001, NMFS observers have reported two interactions with leatherback turtles, but no interaction with loggerheads. NMFS believes that

the suite of mitigation measures implemented by this final rule will effectively reduce or eliminate the take of loggerhead and leatherback sea turtles and reduce the take of other species of sea turtles in the fishery, as similar measures implemented through earlier emergency rulemaking have done.

Changes From the Proposed Rule

In § 660.22, the paragraphs proposed for revision in the proposed rule are redesignated in the order they were published in the proposed rule to account for a recent final rule published at 67 FR 34408, May 14, 2002. The May 14 final rule revised paragraphs (z) through (dd) and added paragraphs (ee) through (ii), effective June 13, 2002. Paragraphs (hh) and (ii) of the May 14 final rule are removed and reserved by this final rule, because those provisions are superceded by this final rule. In § 660.22, paragraphs (kk) and (ll) of the proposed rule are not included in this final rule, because the prohibition in paragraph (kk) is already covered by other prohibitions and because paragraph (ll) already appears as paragraph (uu) of this section. In § 660.32, the references to vessels with working platforms 3 feet (0.9 m) from the sea surface have been changed to refer instead to vessels with a freeboard of 3 feet (0.9 m). “Freeboard” is a more objective measure of the height of a vessel’s deck above the surface than measuring the distance from a working platform to the sea; therefore, this change should improve the ability of NMFS to enforce the regulations.

Classification

This final rule has been determined to be significant for purposes of Executive Order 12866.

On March 30, 2001, NMFS issued an FEIS that analyzes the environmental impacts of U.S. pelagic fisheries in the western Pacific region. The EIS was filed with the Environmental Protection Agency; a Notice of Availability was published on April 6, 2001 (66 FR 18243). NMFS has issued a ROD for this FEIS. A copy of the ROD is available from the PIAO (see **ADDRESSES**).

NMFS prepared an FRFA describing the impact of the action on small entities. The following is a summary of the FRFA.

The need for and objectives of this final rule are stated in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this document and are not repeated here. None of the comments received on the proposed rule directly or indirectly addressed the Initial Regulatory Flexibility Analysis. This final rule will not duplicate, overlap, or conflict with

any other Federal rules. This action is taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 660.

Both large and small vessels affected by the final rule are considered to be “small entities” under guidelines issued by the Small Business Administration because they are independently owned and operated, and have annual receipts not in excess of \$3.5 million. Only the Hawaii-based longline fleet is expected to experience significant direct effects from this final rule. This fishery averaged annual ex-vessel gross revenues of \$40.7 million between 1994 and 1998 (the focus of the BiOp and the last full years’ worth of economic data prior to the implementation of a sequence of measures to protect sea turtles).

Assuming that fishing effort that is displaced as a result of the swordfish targeting prohibition or seasonal area closure is transferred into allowable effort in open areas, the anticipated annual loss of ex-vessel gross revenues from this fishery is estimated to be 11 percent (\$4.3 million). Assuming that all displaced effort is removed from the western Pacific longline fishery, the anticipated annual loss of ex-vessel gross revenue for this fishery is estimated to be 42 percent (\$17.2 million).

Impacts on the American Samoa-based pelagic longline fisheries (the only active U.S. non-Hawaii longline fishery in the western Pacific region) are anticipated to be minimal, as these vessels generally fish below the equator and thus will not be affected by either the targeting restrictions or the seasonal area closure. The only direct cost for this fleet is that of acquiring bolt cutters and line clippers, for the smaller vessels, and bolt cutters, line clippers, and dip nets for the larger vessels. Assuming that these items are purchased in [in or from the state itself] Hawaii and are useable for several years, the average cost per vessel is anticipated to be approximately \$20 per vessel for bolt cutters, \$30 per vessel for line clippers, and \$75 per vessel for dip nets. The impact on fishing operations of using these items is anticipated to be minor because the likelihood of encountering a turtle is low, and in the event that a turtle is hooked or entangled, it is not a time-consuming procedure to free it.

Impacts on non-longline pelagic vessels throughout the region are also anticipated to be minimal, as the final rule will not affect the operations of these vessels beyond the requirement that vessel operators purchase and use

bolt cutters and line clippers to free hooked or entangled sea turtles. Because the use of long handled line clippers is optional on these small vessels, it is believed that the majority of these vessel operators will employ their bolt cutters to cut their fishing line if necessary. The impact on fishing operations of using these items is anticipated to be minor because the likelihood of encountering a turtle is low, and in the event that a turtle is hooked or entangled, it should not be a time-consuming procedure to free it.

This final rule (the preferred alternative) implements the provisions of the reasonable and prudent alternative of the March 29, 2001, BiOp regarding the protection of endangered and threatened sea turtles for all pelagic fisheries in the western Pacific region. This final rule contains the provisions of the emergency rule for the Hawaii-based pelagic longline fishery effective through June 8, 2002. A range of other alternatives was also considered in the FRFA. The first alternative was the no action alternative, which would have allowed the current emergency rule to expire, removing restrictions on the fishery that protect sea turtles. This alternative was rejected because it would not provide any additional protection to sea turtles. A second alternative would have prohibited shallow setting by longline vessels in the western Pacific region, required longline fishing vessel operators to carry and use line clippers and dip nets and to employ specific handling techniques to mitigate interactions with sea turtles. This alternative was rejected because, although it would have mitigated longline interactions with sea turtles, it would not have provided sufficient protection to ensure that the fishery avoids jeopardizing the continued existence of sea turtles. A third alternative would have closed waters north of 29° N. lat. to longline fishing from July through January of each year, and required longline fishing vessel operators to carry and use line clippers and dip nets and to employ specific handling techniques to mitigate interactions with sea turtles. This alternative was also rejected because, although it would have mitigated longline interactions with sea turtles, it would not have provided sufficient protection to ensure that the fishery avoids jeopardizing the continued existence of sea turtles. A fourth alternative would have closed all western Pacific EEZ waters to longline fishing and prohibited the landing of longline caught fish in all U.S. western Pacific ports. This alternative was also

rejected because, although it would have provided increased protection to sea turtles as compared to the preferred alternative, it would also have eliminated western Pacific longline fisheries. NMFS believes that the preferred alternative allows the continued harvest of pelagic fish in the western Pacific region while also protecting endangered and threatened sea turtles. Furthermore, it is the only alternative that meets the requirements of the ESA, through implementation of the reasonable and prudent alternative of the March 29, 2001, BiOp. A copy of the FRFA is available from the Council (see **ADDRESSES**).

A formal section 7 consultation under the ESA was concluded for the FMP, resulting in the March 29, 2001, BiOp. In the BiOp, NMFS determined that fishing activities conducted under the FMP and its implementing regulations were likely to jeopardize the continued existence of the green sea turtle, leatherback turtle, and loggerhead turtle and prescribed a non-discretionary reasonable and prudent alternative for this FMP to avoid the likelihood of jeopardizing the continued existence of these sea turtles. This final rule implements this non-discretionary reasonable and prudent alternative, as well as non-discretionary terms and conditions also in the BiOp.

Under 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NMFS, finds good cause to waive the 30-day delay in effectiveness for turtle mitigation measures for the Hawaii-based longline fishery. A waiver of the delay in effectiveness for the final rule is needed to ensure the uninterrupted protection of sea turtles in the fishery following the expiration of an emergency interim rule on June 8, 2002. All turtle mitigation measures in this final rule applicable to non-Hawaii longline fisheries will take effect 30-days following publication of this final rule except for the mitigation measure requiring that operators with Western Pacific general longline permits to attend a protected species workshop, which will take effect on August 31, 2002.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

Dated: June 6, 2002.

William, T. Hogarth,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows: Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.21, paragraph (l) is added to read as follows:

§ 660.21 Permits.

* * * * *

(l) Applications for the re-registration of any vessel that was de-registered from a Hawaii longline limited access permit after March 29, 2001, must be received at PIAO or postmarked between September 15 and October 15.

3. In § 660.22, paragraphs (hh) and (ii) are removed and reserved and paragraphs (jj) through (tt) are added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(jj) Fail to carry line clippers, dip nets, and wire or bolt cutters on a vessel registered for use under a Hawaii longline limited access permit or a longline general permit that has a freeboard of more than 3 ft (0.9 m) in violation of § 660.32(a).

(kk) Fail to carry line clippers and wire or bolt cutters on a vessel fishing with hooks for Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands that has a freeboard more than 3 ft (0.9 m) in violation of § 660.32(a)(2).

(ll) Fail to carry line clippers and wire or bolt cutters on a vessel registered for use under a Hawaii longline limited access permit or a longline general permit or on a vessel fishing with hooks for Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, that has a freeboard of less than 3 ft (0.9 m) in violation of § 660.32(a)(3).

(mm) Fail to comply with the sea turtle handling, resuscitation, and release requirements when operating a

vessel registered for use under a Hawaii longline limited access permit or a longline general permit, or fishing with hooks for Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands in violation of § 660.32(b).

(nn) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear deployed north of the equator on a vessel registered for use under a Hawaii longline limited access permit or a longline general permit in violation of § 660.33(a).

(oo) Fish for Pacific pelagic management unit species with a vessel registered for use under a Hawaii longline limited access permit or a longline general permit within closed areas or by use of unapproved gear configurations in violation of § 660.33(b), (c), (g), or (h).

(pp) Use a receiving vessel registered for use under a receiving vessel permit to receive, land, or tranship from another vessel, Pacific pelagic management unit species harvested from closed areas with longline gear in violation of § 660.33(d).

(qq) Land or tranship shoreward of the outer boundary of the EEZ around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, Pacific pelagic management unit species that were harvested from closed areas with longline gear in violation of § 660.33(e).

(rr) Possess a light stick on board a vessel registered for use under either a Hawaii longline limited access permit or a longline general permit, on fishing trips that include any fishing north of the equator (0° lat.) in violation of § 660.33(f).

(ss) Possess or land more than 10 swordfish on board a vessel registered for use under either a Hawaii longline limited access permit or a longline general permit, from a fishing trip where any part of the trip included fishing north of the equator (0° lat.) in violation of § 660.33(h).

(tt) Operate a vessel registered for use under a Hawaii longline limited access permit or a longline general permit to fish for Pacific pelagic management unit species without having onboard a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.36(c).

* * * * *

4. In § 660.32, paragraphs (a)(1) and (a)(2) are redesignated as paragraphs

(a)(4) and (a)(5) respectively, new paragraphs (a)(1) and (a)(2) are added, and paragraph (a)(3) is revised to read as follows:

§ 660.32 Sea turtle take mitigation measures.

(a) *Possession and use of required mitigation gear*—(1) Owners and operators of vessels registered for use under a Hawaii longline limited access permit or (after July 12, 2002) a longline general permit that have a freeboard more than 3 ft (0.9 m) must carry aboard their vessels line clippers meeting the minimum design standards as specified in paragraph (a)(4) of this section, dip nets meeting minimum standards prescribed in paragraph (a)(5) of this section, and wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

(2) Owners and operators of vessels using hooks to target Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, that have a freeboard more than 3 ft (0.9 m) must carry aboard their vessels line clippers meeting the minimum design standards as specified in paragraph (a)(4) of this section, and wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

(3) Owners and operators of vessels registered for use under a Hawaii longline limited access permit or a longline general permit, or using hooks to target Pacific pelagic management unit species within EEZ waters around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, that have a freeboard of 3 ft (0.9 m) or less must carry aboard their vessels line clippers capable of cutting the vessels fishing line or leader within approximately 1 ft (0.3 m) of the eye of an embedded hook as well as wire or bolt cutters capable of cutting through the vessel's hooks. These items must be used to disengage

any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

* * * * *

5. Section 660.33 is added to read as follows:

§ 660.33 Western Pacific longline fishing restrictions.

(a) Owners and operators of vessels registered for use under a Hawaii longline limited access permit or a longline general permit may not use longline gear to fish for or target swordfish (*Xiphias gladius*) north of the equator (0° lat.).

(b) A person aboard a vessel registered for use under a Hawaii longline limited access permit or a western Pacific general longline permit that is fishing for Pacific pelagic management unit species north of the equator (0° lat.) may not possess or deploy any float line that is shorter than or equal to 20 m (65.6 ft or 10.9 fm). As used in this paragraph "float line" means a line used to suspend the main longline beneath a float.

(c) From April 1 through May 31, owners and operators of vessels registered for use under a Hawaii longline limited access permit or a longline general permit may not use longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180 long. (see Figure 1 to this section).

(d) From April 1 through May 31, owners and operators of vessels registered for use under a receiving vessel permit may not receive from another vessel Pacific pelagic management unit species that were harvested by longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long. (see Figure 1 to this section).

(e) From April 1 through May 31, owners and operators of vessels registered for use under a Hawaii longline limited access permit, a longline general permit, or a receiving vessel permit, may not land or tranship shoreward of the outer boundary of the EEZ around Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Midway, Johnston or Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, or Howland Islands, Pacific pelagic management unit species that were harvested by longline gear in waters bounded on the south by 0 latitude, on the north by 15° N. lat., on the east by

145° W. long., and on the west by 180° long. (see Figure 1 to this section).

(f) No light stick may be possessed on board a vessel registered for use under either a Hawaii longline limited access permit or a longline general permit, during fishing trips that include any fishing north of the equator (0° lat.). 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.

(g) When a conventional monofilament longline is deployed in

the water north of 0° lat. by a vessel registered for use under a Hawaii longline limited access permit or a longline general permit, no fewer than 15 branch lines may be set between any 2 floats when fishing north of the equator. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats when fishing north of the equator.

(h) Longline gear deployed north of 0° lat. by a vessel registered for use under a Hawaii longline limited access permit or a longline general permit must be deployed such that the deepest point of

the main longline between any 2 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.

(i) Owners and operators of longline vessels registered for use under a Hawaii longline limited access permit or a longline general permit may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing north of the equator (0° lat.).

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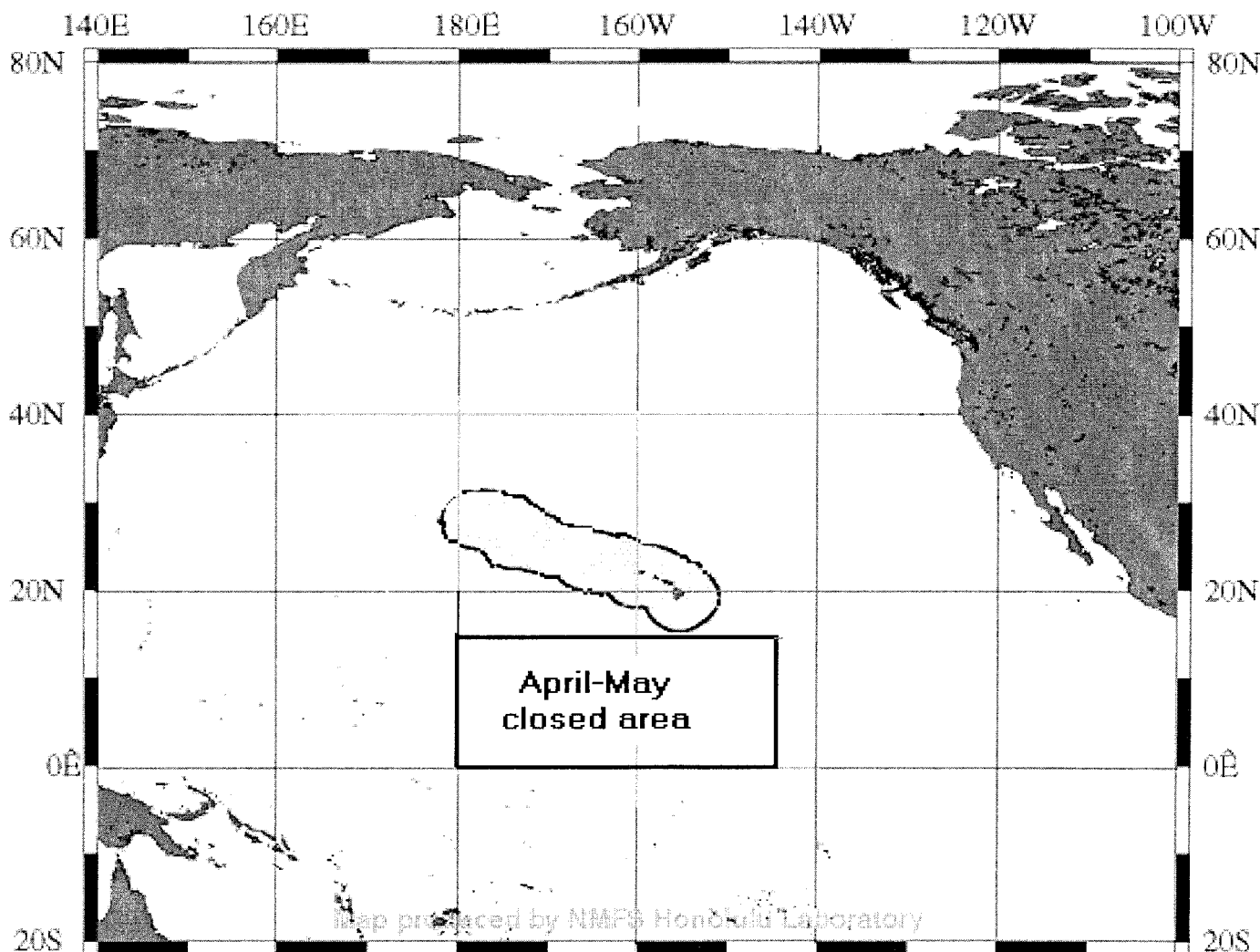


Figure 1 to § 660.33 - Longline Fishing Restricted Area

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6. Section 660.36 is redesignated as § 660.34 and revised to read as follows:

§ 660.34 Protected species workshop.

(a) Each year the operator of a vessel registered for use under a Hawaii longline limited access permit or (after August 31, 2002) a longline general permit must attend and be certified for

completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species.

(b) A protected species workshop certificate will be issued by NMFS

annually to any person who has completed the workshop.

(c) An operator of a vessel registered for use under Hawaii longline limited

access permit or a longline general permit and engaged in longline fishing, must have on board the vessel a valid protected species workshop certificate

issued by NMFS or a legible copy thereof.

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