

inflation) or more by either State, local, and tribal governments in the aggregate or by the private sector in any 1 year.

### Environmental Impact

The Secretary has previously considered the environmental effects of this rule as announced in the Final Rule (66 FR 4076 at 4088). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that neither an environmental assessment nor an environmental impact statement is required.

### Executive Order 13132: Federalism

The Secretary has analyzed this proposed rule in accordance with Executive Order 13132: Federalism. Executive Order 13132 requires Federal agencies to carefully examine actions to determine if they contain policies that have federalism implications or that preempt State law. As defined in the Order, "policies that have federalism implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that 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.

The Secretary is publishing this proposed rule to modify treatment regulations that provide for the use of approved opioid agonist treatment medications in the treatment of opiate addiction. The Narcotic Addict Treatment Act (NATA, Pub. L. 93–281) modified the Controlled Substances Act (CSA) to establish the basis for the Federal control of narcotic addiction treatment by the Attorney General and the Secretary. Because enforcement of these Sections of the CSA is a Federal responsibility, there should be little, if any, impact from this rule on the distribution of power and responsibilities among the various levels of government. In addition, this proposed rule does not preempt State law. Accordingly, the Secretary has determined that this proposed rule does not contain policies that have federalism implications or that preempt State law.

### Paperwork Reduction Act of 1995

This proposed rule modifies 42 CFR 8.12(i) by reducing regulatory dispensing requirements for buprenorphine and buprenorphine combination products that may be used in SAMHSA-certified opioid treatment

programs. The proposed rule establishes no new reporting or recordkeeping requirements beyond those discussed in the January 17, 2001, Final Rule (66 FR 4076 at 4088). On January 10, 2007, the Office of Management and Budget approved the information collection requirements of the Final Rule under control number 0930–0206.

### Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" as defined in the Executive Order, to include regulations that have "substantial direct effects on one or more Indian tribes, 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." This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175.

Dated: May 1, 2009.

**Eric B. Broderick,**

*Acting Administrator, SAMHSA, Assistant Surgeon General.*

Dated: May 13, 2009.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

### List of Subjects in 42 CFR Part 8

Health professions, Levo-Alpha-Acetyl-Methadol (LAAM), Methadone, Reporting and recordkeeping requirements.

For the reasons set forth above, part 8 of Title 42 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 8 continues to read as follows:

**Authority:** 21 U.S.C. 823; 42 U.S.C. 257a, 290aa(d), 290dd–2, 300x–23, 300x–27(a), 300y–11.

2. Section 8.12(i)(3) introductory text is revised to read as follows:

#### § 8.12 Federal opioid treatment standards.

\* \* \* \* \*

(i) \* \* \*

(3) Such determinations and the basis for such determinations consistent with the criteria outlined in paragraph (i)(2) of this section shall be documented in the patient's medical record. If it is determined that a patient is responsible in handling opioid drugs, the dispensing restrictions set forth in paragraphs (i)(3)(i) through (vi) of this section apply. The dispensing restrictions set forth in paragraphs (i)(3)(i) through (vi) of this section do not apply to buprenorphine and buprenorphine products listed under 42 CFR 8.12(h)(2)(iii).

\* \* \* \* \*

[FR Doc. E9–14286 Filed 6–18–09; 8:45 am]

BILLING CODE 4160–20–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 300 and 665

[Docket No. 080225267–9319–02]

RIN 0648–AW49

#### International Fisheries Regulations; Fisheries in the Western Pacific; Pelagic Fisheries; Hawaii-based Shallow-set Longline Fishery

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

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

**SUMMARY:** This proposed rule would remove the annual limit on the number of fishing gear deployments (sets) for the Hawaii-based pelagic longline fishery. The rule would also increase the current limit on incidental interactions that occur annually between loggerhead sea turtles and shallow-set longline fishing. The proposed rule is intended to increase opportunities for the shallow-set fishery to sustainably harvest swordfish and other fish species, without jeopardizing the continued existence of sea turtles and other protected resources. This proposed rule would also make several administrative clarifications to the regulations.

**DATES:** Comments on the proposed rule must be received by August 3, 2009.

**ADDRESSES:** Comments on this proposed rule, identified by 0648–AW49, may be sent to either of the following addresses:

• Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov); or

• Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: All comments received are a part of the public record and will generally be posted to [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required name and organization fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FMP) and Amendment 18, including a final supplemental environmental impact statement (SEIS), are available from [www.regulations.gov](http://www.regulations.gov), and the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, [www.wpcouncil.org](http://www.wpcouncil.org).

**FOR FURTHER INFORMATION CONTACT:**

Adam Bailey, Sustainable Fisheries Division, NMFS PIR, 808–944–2248.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This proposed rule is also accessible at [www.gpoaccess.gov/fr](http://www.gpoaccess.gov/fr).

**Background**

Pelagic fisheries in the U.S. western Pacific are managed under the Pelagics FMP, developed by the Council and approved and implemented by NMFS. The Council has submitted Amendment 18 and draft regulations to NMFS for review under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This proposed rule would implement the management provisions recommended in Amendment 18. This proposed rule would also make housekeeping changes to the pelagic fishing regulations, not related to Amendment 18.

The Hawaii-based shallow-set longline fishery began in late 2004 to test the effectiveness in the Pacific of a hook-and-bait combination that was found to dramatically reduce interactions with sea turtles when tested in the Atlantic pelagic longline fishery. A combination of circle hooks and mackerel-type bait was found to reduce interactions with leatherback and

loggerhead sea turtles by 67 and 92 percent, respectively, in the Atlantic. A final rule, published and effective on April 2, 2004 (69 FR 17329), established a limited “model” Hawaii-based shallow-set swordfish fishery requiring the use of circle hooks and mackerel-type bait. To test the effectiveness of the gear combination and measure its impact on the environment, fishing effort in the model Hawaii fishery was limited to 2,120 sets, roughly 50 percent of the 1994–99 annual average number of sets. Those sets were distributed equally among permit holders who applied each year to participate in the fishery. As an additional safeguard, a limit was implemented on the number of unintended interactions with sea turtles that could occur in the shallow-set fishery. The fishery would be closed for the remainder of the calendar year if either interaction limit was reached.

Under the requirements implemented by that 2004 final rule, vessel operators in the Hawaii-based shallow-set fishery must currently use large circle hooks and mackerel-type bait. The fishery operates under a set certificate program that ensures that the fleet does not make more than a total of 2,120 shallow-sets per year. The fleet may not interact with (hook or entangle) more than 17 loggerhead sea turtles or 16 leatherback sea turtles each year. NMFS requires every vessel to carry an observer when shallow setting.

The current sea turtle interaction limits do not represent the upper limit of interactions that would avoid jeopardizing the continued existence of sea turtles, but instead are the annual number of sea turtle interactions anticipated to occur in this fishery, as calculated by multiplying expected fishing effort by interaction rates derived from studies using circle hooks and mackerel bait in U.S. longline fisheries in the Atlantic.

The use of large circle hooks and mackerel-type bait in Hawaii’s shallow-set longline fishery has reduced sea turtle interaction rates by approximately 90 percent for loggerheads and 83 percent for leatherbacks, compared to the previous period 1994–2002 when the fishery was operating without these requirements. The fishery has been closed once, in 2006, as a result of reaching an interaction limit. See [www.fpir.noaa.gov/SFD/SFD\\_turtleint.html](http://www.fpir.noaa.gov/SFD/SFD_turtleint.html) for a history of shallow-set fishery interactions with loggerhead and leatherback sea turtles. Because this gear combination has proven to be highly effective in reducing sea turtle interaction rates, the Council examined and considered a range of management alternatives that would

allow increased shallow-set fishing effort. An increase in fishing effort would be associated with an increase in the allowable associated sea turtle interaction limits. The shallow-set certificate program used to govern the effort limit would be removed. This proposed rule intends to optimize the harvest of swordfish and other fish, without jeopardizing the continued existence and recovery of threatened and endangered sea turtles and other protected species. The proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act goals to achieve optimum yield from the shallow-set fishery, while minimizing bycatch and associated mortality.

A range of management alternatives was identified during the development of this proposed rule, as described in the summary of the SEIS in the Classification section below. Under all analyzed management alternatives, other measures that are currently applicable to the fishery would remain unchanged, including, but not limited to, limited access permits, vessel and gear marking requirements, vessel length restrictions, Federal catch and effort logbooks, 100-percent observer coverage, large longline restricted areas around the Hawaiian Archipelago, vessel monitoring system (VMS), annual protected species workshops, and the use of sea turtle, seabird, and marine mammal handling and mitigation gear and techniques.

This proposed rule would remove the annual limits on shallow-set fishing effort and the requirements of the shallow-set certificate program found at 50 CFR 665.33, the related prohibitions at 50 CFR 665.22, and the definition of a shallow-set certificate found at 50 CFR 665.12. The annual limits for sea turtle interactions would be revised in 50 CFR 665.33. Also in that section, the Regional Administrator would be required to publish an annual notification in the **Federal Register** of the applicable annual sea turtle interaction limits, and if an interaction limit is exceeded in any one calendar year, the annual limit for that sea turtle species would be adjusted downward the following year by the number of interactions by which the limit was exceeded.

In addition to Amendment 18’s recommended modifications to the shallow-set effort and turtle interaction measures, this proposed rule would make several technical clarifications to the longline regulations, unrelated to Amendment 18. First, this proposed rule would clarify the technical specifications regarding required circle

hooks. In a final rule published on November 15, 2005, NMFS implemented a requirement for Hawaii-based shallow-set longline fishermen to use circle hooks, size 18/0 or larger with an offset of 10 degrees (70 FR 69282). The wording of this requirement was intended to mirror the requirement for Atlantic longline fishing, which require the use of circle hooks with an offset *not to exceed* 10 degrees (69 FR 40734; July 6, 2004). The November 2005 final rule for the western Pacific shallow-set fishery inadvertently omitted the phrase "not to exceed." This proposed rule would correct the error. The result would be that shallow-set longline fishermen could use hooks with a range of offset from zero to 10 degrees.

The second proposed technical change to longline regulations would clarify the requirement to carry line clippers, including the design specifications, on vessels registered for use under a Hawaii longline limited access permit. On March 28, 2000, NMFS published a final rule that implemented several measures designed to mitigate injuries to sea turtles by the Hawaii longline pelagic fishery, including requirements to carry and use line clippers, dip nets, and dehookers (65 FR 16347). In a subsequent final rule relating to sea turtle mitigation measures (70 FR 69282, November 15, 2005), the requirements in 50 CFR 665.32 specifically relating to line clippers were inadvertently omitted. This proposed rule would correct the error. The corrected regulation would require fishermen to carry on board their vessels and use line cutters meeting NMFS design specifications. The proposed rule would also redesignate several paragraphs in 50 CFR 665.32 for organizational clarity.

In the third technical clarification, this proposed rule would remove two regulations that have been superseded by more stringent regulations. In 50 CFR 665.22, paragraph (gg) prohibits shallow-set longline fishing from a vessel registered for use under a Hawaii longline limited access permit north of the Equator with hooks other than circle hooks. That paragraph was superseded by paragraph (jj), which prohibits such fishing from a vessel registered under any western Pacific longline permit. Similarly, paragraph (hh) prohibits shallow-set longline fishing from a vessel registered for use under a Hawaii longline limited access permit north of the Equator with bait other than mackerel-type bait. That paragraph was superseded by paragraph (kk), which prohibits such fishing from a vessel registered for use under any western Pacific longline permit. Thus,

paragraphs (gg) and (hh) would be removed.

Finally, a technical clarification would be made to the high seas fishing regulations to correct a reference to western Pacific domestic fishing regulations. In 50 CFR 300, paragraph (1)(v) incorrectly refers to Pacific longline reporting requirements at 50 CFR 660.14. This reference would be corrected to refer to the requirements at 50 CFR 665.14.

Public comments on this proposed rule must be received by close of business on August 3, 2009, not postmarked or otherwise transmitted by that date.

### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pelagics FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

A final SEIS is included with Amendment 18. A notice of availability of the draft SEIS was published on August 22, 2008 (73 FR 49667). To reduce the complexity of the SEIS analyses, the proposal was divided into three topic areas, each with its own range of alternatives as summarized below.

#### *Topic 1: Shallow-set Longline Fishing Effort Limits*

The fishery is currently limited to 2,120 shallow sets per year, which is half the average annual fishing effort during 1994–99. The existing annual sea turtle interaction limits of 17 loggerhead sea turtles and 16 leatherback sea turtles were determined based on experimental (Atlantic Ocean) interaction rates multiplied by the 2,120 set limit. Under Alternatives 1A–1E below, the annual sea turtle interaction limits for the fishery were similarly predicted using observed Pacific Ocean sea turtle interaction rates multiplied by each alternative's effort limit. In the case of Alternative 1F (remove effort limit), revised sea turtle interaction limits were recommended by the Council, taking into account the potential for reasonable increases in fishing effort, as well as likely impacts on sea turtle populations.

*Alternative 1A:* No action; continue the current annual set limit. Under this alternative, the maximum annual limit on the number of shallow-sets would remain at 2,120.

*Alternative 1B:* Allow up to 3,000 sets per year. This effort limit was chosen as a middle-ground effort alternative in-between the current set limit and the

average annual effort during 1994–99 (approximately 4,240 sets).

*Alternative 1C:* Allow up to 4,240 shallow sets per year. This effort limit represents the average number of annual sets during 1994–99, or double the current set limit of 2,120.

*Alternative 1D:* Allow up to 5,500 shallow sets per year. This effort limit is nearly the annual maximum number of sets for any one year from 1994–99.

*Alternative 1E:* Set effort level commensurate with current conditions and the maximum sustainable yield (MSY) of North Pacific swordfish stock (about 9,925 sets per year). This effort limit would take into account catches by other longline fleets and the portion of the total swordfish catch already made by the Hawaii fleet. Current domestic and foreign swordfish landings in the North Pacific amount to about 14,500 mt, which, according to a recent stock assessment, amounts to about 60 percent of an estimated MSY of 22,284 mt. Given that MSY and a current swordfish catch by the Hawaii-based fishery of between 850 to 1,637 mt, the amount of effort to catch the remaining available 7,784 mt of additional swordfish would be about 9,925 sets per year. The effort limit under this alternative would be adjusted over time, as appropriate.

*Alternative 1F (preferred):* Remove fishing effort limits, increase the annual sea turtle interaction limit to 46 interactions with loggerhead sea turtles, and retain the current limit of 16 interactions with leatherback sea turtles. This alternative would also retain all other shallow-set fishery management measures.

#### *Topic 2: Fishery Participation*

Shallow-set fishing effort is currently administered through a set certificate program. The 2,120 set certificates are allocated equally among permit holders who indicate that they wish to receive them. A set certificate must be attached to each daily fishing log for shallow-set longline fishing. The set certificates may be sold, traded, or otherwise exchanged among other permit holders in the Hawaii-based longline fleet.

*Alternative 2A:* No action; continue the set certificate program. For each shallow set made north of the Equator, vessel operators would continue to be required to possess and submit one valid shallow-set certificate for each shallow set made. The number of certificates could increase under Topic 1, Alternatives 1B–1E.

*Alternative 2B:* Discontinue the set certificate program (preferred). Shallow-set certificates would no longer be issued. For those management

alternatives in Topic 1 that include effort limits, NMFS would account for all shallow sets on a fleet-wide basis through routine fishery monitoring and observer placement, and the fishery would close for the remainder of the year, if and when an annual set limit was reached.

### *Topic 3: Time-Area Closures*

Time-area closures were considered by the Council as a way to increase annual fishery profits through potential reductions in the number of sea turtle interactions that may occur during January through March. Interaction rates for loggerhead sea turtles have typically been highest during this period, and it has been hypothesized that, in areas where swordfish and loggerhead sea turtle habitats may overlap, reducing fishing effort could increase fishery profits by reducing the risk of exceeding a sea turtle interaction limit very early in the year, which would close the fishery when there were still many more shallow sets allowed to be made.

*Alternative 3A:* No action; do not implement time-area closures (preferred). Fishermen would continue to strive to minimize sea turtle interactions under the existing sea turtle handling and mitigation requirements and guidance.

*Alternative 3B:* Implement a January time-area closure. The area closure would be located between 175° W and 145° W longitude and encompass the sea surface temperature band of 17.5° to 18.5° C. The latitude of this temperature band varies over time, but in January it is generally located near 31° to 32° N. Research has suggested that the area between sea surface temperatures of 17.5° to 18.5° C may be an area of high loggerhead sea turtle concentrations, based on historical and contemporary distribution and foraging studies, and observed loggerhead sea turtle interactions with the fishery. The month of January was selected because it may be that the number of loggerhead interactions during January is pivotal to whether or not the fishery will reach its annual sea turtle interaction limit before all allowable shallow sets are deployed. For example, in 2006, the fishery interacted with eight loggerheads in January and the fishery reached the limit of 17 in mid-March. In 2007, the fishery did not interact with any loggerheads during January, but had interacted with 15 loggerheads by the end of the first quarter, and still did not reach the annual sea turtle interaction limit.

*Alternative 3C:* Implement in-season time-area closures. Under Alternative 3C, the sea surface temperature-based

area closure described for Alternative 3B would be implemented only in those years in which 75 percent of the annual loggerhead turtle limit was reached during the first quarter, and the closure would remain in effect for the remainder of the first quarter. As with Alternative 3B, this alternative is being considered as a way to increase annual fishery profits through reductions in the number of turtle interactions that occur in the first quarter of each year. This alternative differs from 3B in that its implementation would be contingent on relatively high numbers of sea turtle interactions during the first quarter.

Under the preferred alternatives, Amendment 18 and this proposed rule would remove the effort limit. The Loggerhead sea turtle interaction limit would be increased to 46, and the leatherback sea turtle interaction limit would remain unchanged at 16. The set certificate program would be eliminated. No time/area closures would be implemented. Under these alternatives, shallow-set fishing effort would not be limited, and could increase to historic levels of 4,000 to 5,000 sets per year (3.4 to 4.2 million hooks/yr). Some increased participation in the shallow-set fishery is anticipated with fishermen from the Hawaii-based deep-set tuna fishery moving into the fishery as a result of quotas being established for bigeye tuna. Entry into the Hawaii longline fishery, including both shallow- and deep-set techniques, would remain limited to 164 vessels.

Based on the information in the draft SEIS, as compared to the no-action alternative, implementing the preferred alternatives would not have significant adverse impacts on target (swordfish) stocks because harvests would not exceed MSY. The preferred alternatives are not expected to significantly alter fishing operations, and catch and discard rates of non-target fish species would remain at an estimated 6–7 percent of the fishery's total annual catch. Resulting fishing mortality of non-target fish species would be expected to be a minor fraction of Pacific-wide catches and well below known MSY levels.

Implementing the preferred alternatives would have no adverse impacts to essential fish habitat or habitat areas of particular concern. The preferred alternatives are expected to affect listed marine mammals, but are not likely to adversely affect Hawaiian monk seals, and blue, fin, sei, sperm, and North Pacific Right whales. The preferred alternatives may affect, and are likely to adversely affect, humpback whales, and loggerhead, leatherback, olive ridley, green, and hawksbill sea

turtles. Under the preferred alternatives, other marine mammal interactions are expected to continue to be relatively low. The preferred alternatives are consistent with the October 2008 Biological Opinion's Reasonable and Prudent Measures and Terms and Conditions.

The fishery will likely result in interactions with Laysan and black-footed albatrosses, but the fishery is not expected to result in a significant impact on any albatross populations, including the endangered short-tailed albatross. No significant cumulative impacts or environmental justice issues were identified.

The complete analysis of the alternatives is contained in Amendment 18 and final SEIS, and is not repeated here. Copies of the environmental analytical documents are available from [www.regulations.gov](http://www.regulations.gov) and the Council (see **ADDRESSES**).

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the proposed rule. A summary of the IRFA follows:

This rule does not duplicate, overlap, or conflict with other Federal rules. There are no disproportionate economic impacts from this rule based on home port, gear type, or relative vessel size. There are no recordkeeping, reporting, or other compliance costs associated with this rulemaking. In the absence of relevant cost data, gross revenue is used as proxy for profitability.

Description and estimate of the number of small entities to which the rule applies

There are approximately 30 active Hawaii-based shallow-set swordfish longline vessels, and an indeterminate number of non-active permit holders that may be affected by this rulemaking. All are considered to be small entities (fish-harvesting business) under the definition provided by the Small Business Administration (SBA) as follows: independently owned and operated, not dominant in its field of operation, and having annual receipts not in excess of \$4.0 million. Between 2005 and 2007, 29 to 37 vessels participated in the shallow-set longline fishery, and the average revenue earned by the vessels was \$225,227. In addition, it is believed that the majority of participants are also active in the deep-set longline fishery during the course of a year. Thus, their shallow-set revenues represent one portion of their total revenue. In 2007, the overall average (combined deep-set and shallow-set

longline fisheries) ex-vessel revenue was \$62.6 million realized by 129 active vessels. On a per-vessel basis, this yields an average ex-vessel revenue of \$486,039 per vessel, still far below the \$4.0 million threshold.

#### Economic Impacts

Preferred Alternative 1F would be expected to have no adverse economic impact on the 30 individual vessels comprising the 2008 fishery. In 2007, 29 vessels made only 1,497 sets. By interpolating this number, the 30 vessels fishing in 2008 are expected to make approximately 1,549 sets. Since the fishery had reopened in 2004, it has never approached the current cap of 2,120 sets. Therefore, this rule would lift a constraint that has not been historically tested by the present participants in the fishery. The elimination of the cap, therefore, would be expected to have no economic impact on the 30 participants in the fishery in 2009. In the long term, removal of the set limit is expected to allow for the entry of new vessels into the fishery, increasing available rents to the fishery as a whole. This is discussed at length in the Regulatory Impact Review (see **ADDRESSES**).

Because the fishery was closed one year as a result of reaching the present loggerhead interaction limit of 17, the increase in allowable turtle interactions for loggerheads to 46 would theoretically translate to a potential increase in gross revenues and vessel profitability that could be measured by comparing the total revenues associated with the old interaction cap and the new interaction cap. The continuation in allowable leatherback interactions, however, would theoretically have no economic impact to the fishery in the short run since, historically, the leatherback cap of 16 has not been reached. However, data on the relationship between turtle interactions and catch are uncertain because of the newness of the managed fishery and the lack of data points. Therefore, those economic impacts would be indeterminate in the short term.

Preferred Alternative 2B, the removal of the requirement for set certificates, will have a minimal yet positive impact on individual vessel owners that would have needed additional certificates to prosecute the fishery. The gross revenue derived from a set averages approximately \$5,000, and the sale of set certificates by those owning a limited access permit has been reported by industry to be between \$50 and \$100, or 2–3 percent of gross revenue per set. This would reflect a cost savings to the vessel and an enhancement of profitability. Alternatively, those that have historically sold their certificates in lieu of fishing could lose \$50 to \$100 dollars per set per year. The private sale of certificates has not been tracked by NMFS due to privacy considerations and the lack of any legal requirements to do so. However, if opportunities outside of fishing for swordfish are assumed to be equal to or exceed profits that could be obtained by using their certificates to fish, the adverse impact to these permit holders would be three percent or less.

Preferred Alternative 3A (no action) will have no impact on the fishery.

There are no significant alternatives to this rulemaking that would have a less adverse or more beneficial economic impact than the preferred. All other alternatives considered regarding number of sets allowed, including the no-action alternative, are expected to have no adverse economic impact to the present participants in the fishery. The no-action alternative for elimination of set certificates would have no economic impact with regard to the present fishery and the permit holders selling certificates. Alternatives that would require the fishery to implement time/area closures would have an indeterminate economic impact on the fishery because the trade-offs between catch and turtle interactions that could close the fishery cannot be estimated with limited existing data. However, there are early indications that time/area closures would not have a substantial impact on turtle interactions or profitability of fishing operations.

A formal section 7 consultation under the Endangered Species Act was conducted for Amendment 18 on the effects of the proposed action on ESA-listed marine species. In a Biological Opinion dated October 15, 2008, NMFS determined that fishing activities under Amendment 18 and its implementing regulations may affect, but are not likely to adversely affect, seven ESA-listed species (Hawaiian monk seal, and blue, fin, sei, sperm, and North Pacific Right whales). NMFS also determined that the proposed action may affect, and is likely to adversely affect, six other ESA-listed marine species that occur in the action area (humpback whale, and loggerhead, leatherback, olive ridley, green, and hawksbill sea turtles). This proposed rule is consistent with the October 2008 Biological Opinion's Reasonable and Prudent Measures and Terms and Conditions.

Additionally, an informal consultation was conducted under section 7 of the ESA with the U.S. Fish and Wildlife Service (USFWS) on the effects of the proposed rule on the endangered short-tailed albatross. The USFWS concurred with the NMFS determination that the proposed action is not expected to result in a significant impact on short-tailed albatross during 2009.

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

#### List of Subjects

##### 50 CFR Part 300

Administrative practice and procedure, International fishing and related activities.

##### 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian Natives, Northern Mariana Islands, Pacific remote island areas, Reporting and recordkeeping requirements.

Dated: June 16, 2009.

**Samuel D. Rauch III**

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

For the reasons set out in the preamble, 50 CFR chapters III and VI are proposed to be amended as follows:

#### CHAPTER III

##### PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart B, continues to read as follows:

**Authority:** 16 U.S.C. 5501 *et seq.*

2. In § 300.17, revise paragraph (b)(1)(v) to read as follows:

##### § 300.17 Reporting.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) Pacific Pelagic Longline — Longline Logbook (§ 665.14(a) of this title);

\* \* \* \* \*

#### CHAPTER VI

##### PART 665—FISHERIES IN THE WESTERN PACIFIC

3. The authority citation for 50 CFR part 665 continues to read as follows:

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

##### § 665.12 [Amended]

4. In § 665.12, remove the definition of “Shallow-set certificate.”

5. In § 665.22, remove and reserve paragraphs (bb), (gg), and (hh), and revise paragraph (jj) to read as follows:

##### § 665.22 Prohibitions.

\* \* \* \* \*

(jj) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 665.21 north of the Equator (0° lat.) with hooks other than circle hooks sized 18/0 or larger, with an offset not to exceed 10 degrees, in violation of § 665.33(f).

\* \* \* \* \*

6. In § 665.32,

a. Revise paragraphs (a)(1) and (a)(2);  
b. Redesignate paragraphs (a)(5) and (a)(6) as paragraphs (a)(6) and (a)(7), respectively;

c. Add new paragraph (a)(5);

d. Revise introductory text to newly-redesignated paragraphs (a)(7)(ii) and (a)(7)(iii);

e. Add new paragraph (a)(7)(iii)(C);

f. In newly-redesignated paragraph (a)(7), redesignate paragraphs (a)(7)(iv), (a)(7)(vii), (a)(7)(viii), (a)(7)(ix), and (a)(7)(x) as paragraphs (a)(8), (a)(9), (a)(10), (a)(11), and (a)(12), respectively; and

g. In newly-redesignated paragraph (a)(7), redesignate paragraph (a)(7)(v) as paragraph (a)(7)(iv), and redesignate paragraph (a)(7)(vi) as paragraph (a)(7)(v).

The revisions and additions read as follows:

**§ 665.32 Sea turtle take mitigation measures.**

(a) \* \* \*

(1) *Hawaii longline limited access permits.* Any owner or operator of a vessel registered for use under a Hawaii longline limited access permit must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting minimum design and performance standards specified in paragraph (a)(7) of this section.

(2) *Other longline vessels with freeboards of more than 3 ft (0.91 m).* Any owner or operator of a longline vessel with a permit issued under § 665.21 other than a Hawaii limited access longline permit and that has a freeboard of more than 3 ft (0.91 m) must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting the minimum design and performance standards specified in paragraph (a)(7) of this section.

\* \* \* \* \*

(5) *Line clippers.* Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper (ALC) is a model

line clipper that meets these minimum design standards and may be fabricated from readily available and low-cost materials (see Figure 1 to this section). The minimum design standards are as follows:

(i) *A protected cutting blade.* The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(ii) *Cutting blade edge.* The blade must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(iii) *An extended reach handle for the cutting blade.* The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(iv) *Secure fastener.* The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

\* \* \* \* \*

(7) \* \* \*

(ii) *Long-handled dehooker for external hooks.* This item is intended to be used to remove externally-hooked hooks from sea turtles that cannot be brought aboard. The long-handled dehooker for ingested hooks described in paragraph (a)(7)(i) of this section meets this requirement. The minimum design and performance standards are as follows: \* \* \*

\* \* \* \* \*

(iii) *Long-handled device to pull an “inverted V”.* This item is intended to be used to pull an “inverted V” in the fishing line when disentangling and dehooking entangled sea turtles. One long handled device to pull an “inverted V” is required on the vessel. The minimum design and performance standards are as follows: \* \* \*

\* \* \* \* \*

(C) The long-handled dehookers described in paragraphs (a)(7)(i) and (ii) of this section meet this requirement.

\* \* \* \* \*

7. In § 665.33, remove and reserve paragraphs (a), (c), and (e), and revise paragraphs (b) and (f) to read as follows:

**§ 665.33 Western Pacific longline fishing restrictions.**

\* \* \* \* \*

(b) *Limits on sea turtle interactions.*

(1) Maximum annual limits are established on the number of physical interactions that occur each calendar year between leatherback and loggerhead sea turtles and vessels registered for use under Hawaii longline limited access permits while shallow-setting.

(i) The annual limit for leatherback sea turtles (*Dermochelys coriacea*) is 16, and the annual limit for loggerhead sea turtles (*Caretta caretta*) is 46.

(ii) If any annual sea turtle interaction limit in paragraph (b)(i) of this section is exceeded in a calendar year, the annual limit for that sea turtle species will be adjusted downward the following year by the number of interactions by which the limit was exceeded.

(iii) No later than January 31 of each year the Regional Administrator will publish a notice in the **Federal Register** of the applicable annual sea turtle interaction limits established pursuant to paragraphs (b)(i) and (b)(ii) of this section.

\* \* \* \* \*

(f) Any owner or operator of a vessel registered for use under any longline permit issued under § 665.21 must use only circle hooks sized 18/0 or larger, with an offset not to exceed 10 degrees, when shallow-setting north of the Equator (0° lat.). As used in this paragraph, an offset circle hook sized 18/0 or larger is one with an outer diameter at its widest point no smaller than 1.97 inches (50 mm) when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). As used in this paragraph, the allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

\* \* \* \* \*

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