

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 223, 224, and 660**

[Docket No. 031125294–3294–01; I.D. 102903C]

RIN 0648–AP42

**Fisheries Off West Coast States and in the Western Pacific; Highly Migratory Species Fisheries**

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

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

**SUMMARY:** NMFS proposes regulations to implement the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP), which was submitted by the Pacific Fishery Management Council (Pacific Council) for review and approval by the Secretary of Commerce.

**DATES:** Comments must be received by January 26, 2004.

**ADDRESSES:** Comments should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Copies of the FMP, environmental impact statement (EIS), regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) may be obtained from Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Svein Fougner, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or faxed to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Sustainable Fisheries Division, NMFS, at 562–980–4040.

**SUPPLEMENTARY INFORMATION:** The Pacific Council prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* On January 18, 2002, a notice of availability of a Draft Environmental Impact Statement for the FMP was published in the **Federal Register** (67 FR 2651). The Pacific Council held 7

public hearings on the FMP from January 28, 2002, to February 4, 2002, in the States of Washington, Oregon, and California. At its March 2002 meeting in Sacramento, CA, the Pacific Council reviewed public comments received at the hearings, considered written and oral comments, and adopted preliminary preferred alternatives for some issues, leaving its decision on other alternatives for a future meeting. At its October–November 2002 meeting in Foster City, CA, the Pacific Council adopted all of its preferred alternatives and voted to submit the FMP for Secretarial review.

Among the preferred alternatives was a provision to allow longline fishing targeting swordfish east of 150° W. longitude (long.). Before the final FMP document was submitted, however, NMFS informed the Pacific Council at its March 2003 meeting in Sacramento, CA about potential impacts of the fishery under the preferred alternative on endangered sea turtles. NMFS asked the Pacific Council to delay submission of the FMP to provide time for a rigorous scientific analysis of recently collected observer data, and review of the results by the Pacific Council and its advisory bodies, prior to final completion and submission of the FMP. Those data indicated that take rates of sea turtles in the longline fishery in the eastern Pacific were similar to those in the western Pacific, and if those rates were representative of what could be expected in the fishery, there could be excessive sea turtle takes under the Pacific Council's preferred alternative. At the Pacific Council's June 2003 meeting in Foster City, CA, NMFS presented reports on the catch rates of turtles in the longline fishery and the results of the scientific analysis of the data. NMFS informed the Pacific Council that allowing longline fishing targeting swordfish east of 150° W. long. may not provide sufficient protection to endangered and threatened sea turtles. Therefore, this alternative might not be approved. The Pacific Council then heard reports from its advisory bodies and public comments and concluded that the FMP should be submitted without changing any of its preferred alternatives. The Pacific Council then completed the final FMP and submitted it for Secretarial review. A Notice of Availability of the FMP was published in the **Federal Register** at 68 FR 62763, November 6, 2003.

The FMP that would be implemented by this proposed rule is intended to address concerns about the effect of fishing on highly migratory species (HMS) off the U.S. West Coast and on ocean resources caught incidentally to

fishing for HMS. The fish species included in the management unit are tuna (yellowfin, bigeye, skipjack, albacore, and northern bluefin), billfish (striped marlin and swordfish), oceanic sharks (common thresher, bigeye thresher, pelagic thresher, shortfin mako, blue), and dorado (also commonly known as mahi mahi and dolphinfish). Other species ranging throughout the Pacific Ocean throughout the Pacific are taken incidental to fishing for HMS but are not in the management unit. A significant amount of information exists on some species, such as some of the tunas, but comprehensive stock assessments are needed for many species, which are harvested by numerous coastal and distant-water fishing nations throughout the Pacific. United States fishermen fish HMS in the U.S. exclusive economic zone (U.S. EEZ), in the exclusive economic zones of other nations, and on the high seas.

Marine mammals, sea turtles, and sea birds also are occasionally caught incidental to fishing for HMS by some gear types. The effect on such species of takes by fishing gear is a problem throughout the Pacific Ocean, and the United States has in many cases already taken action under the authority of the Magnuson-Stevens Act, the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) to minimize or mitigate the impact of U.S. fisheries on these resources. The FMP would provide additional protective measures for West Coast HMS fisheries.

The FMP, if approved, would directly impose certain conservation and management measures on the fisheries as well as provide a procedural framework for future management actions that might be necessary as the international and U.S. fisheries change.

**Management Unit Species**

The FMP is intended to ensure conservation and promote the achievement of optimum yield of those HMS that are defined as management unit species in the FMP. The FMP is designed to conserve HMS throughout their individual ranges, both within and beyond the U.S. EEZ to the extent practicable, recognizing that management authority of all species falls within many jurisdictions. The Pacific Council reviewed 6 alternatives for designating management unit species. As indicated, the proposed species to be managed are striped marlin and swordfish; common, pelagic, and bigeye thresher shark, shortfin mako (bonito) shark, and blue shark; north Pacific albacore, yellowfin, bigeye, skipjack, and northern bluefin