

framework processes in the FMP to address these issues to the extent FMP regulations are appropriate. This process does not prevent the AA from taking action under the authority of the MMPA and the ESA independent of the Pacific Council process.

The Pacific Council submitted draft regulations with the FMP as required by the Magnuson-Stevens Act. While technical changes have been made for clarity and compliance with requirements of the Office of the **Federal Register**, no substantive changes in the regulations have been made.

Classification

At this time, NMFS has not determined that the FMP this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Pacific Council prepared the FMP in the format of a final environmental impact statement (FEIS) consistent with the National Environmental Protection Act (NEPA). NOAA expects to file the FEIS with the Environmental Protection Agency after Secretarial review of the FMP has begun but before final action to approve, disapprove, or disapprove in part the FMP. The FMP contains a framework management process that facilitates timely implementation of management measures by the Pacific Council without amending the FMP. This will allow the Pacific Council and NMFS to act quickly to address resource conservation issues. Maximum sustainable yield is established for all managed species to ensure compliance with the Magnuson-Stevens Act, although some species are also managed by international organizations and come within the jurisdiction of other fishery management councils. Consistency of management to ensure effective conservation and management is a goal of the FMP. Harvest limits are established for common thresher and mako shark to prevent local depletion. Although highly migratory, evidence indicates that local depletion of these sharks can occur and would have an impact on these species and the fisheries involved. To protect endangered turtles and protected seabirds, the FMP makes regulations governing longline fishing from West Coast ports consistent with the rules established for longline vessels fishing out of Hawaii, when West Coast vessels are fishing west of 150° W. long.; therefore, all U.S. fishermen must

adhere to the same conservation measures in these waters regardless of jurisdiction. However, in waters east of 150° W. long., West Coast longline vessels would not be subject to the same limitation as western Pacific vessels. The impacts of this approach, both with respect to implications for effective management and with respect to ESA issues, will be fully evaluated through the review of the FMP and the section 7 consultations described above. Rules governing drift gillnet fishing issued under the authority of the ESA are incorporated in the FMP. Incorporating rules in the FMP issued under other authorities will ensure wider public review of management issues and broader analysis. Permit and reporting requirements of the FMP build on existing programs to obtain sufficient information needed for management while minimizing duplication.

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

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

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

Fishing vessels targeting HMS are expected to be the only types of small entities directly impacted by the proposed actions. Any regulatory action under the FMP that would result in a reduction in domestic landings of HMS are expected to be offset at the processor level by imports at comparative prices. None of the initial regulatory alternatives considered are expected to add to the costs or reduce revenues of marinas and charter/party boats. Only the permit and logbook requirements described below would add additional reporting.

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and elsewhere in the **SUPPLEMENTARY INFORMATION** of this proposed rule and are not repeated here.

The FMP proposes management of 5 commercial fishing fleets and a fleet of recreational charter vessels. Each fleet has its own gear requirements, each has a differential impact on ocean resources, and each has different economic

circumstances. The FMP authorizes commercial legal HMS gear as harpoon, surface hook and line, drift gillnet of at least 14-inch (35.56-cm) stretched mesh or greater, purse seine, and pelagic longline. The FMP authorizes rod and reel, spear, and hook and line as recreational gear. An alternative for drift gillnet gear was to allow stretched mesh less than 14 inches (35.56 cm).

The proposed alternative of requiring 14-inch (35.56-cm) stretched mesh or larger is consistent with the historic use of drift gillnet used to target swordfish and sharks. Fishermen estimated that there may be as many as 8–10 vessels that occasionally use small-mesh drift gillnets when albacore and bluefin tuna are available. There could be as many as 20 vessels that might have fished small-mesh drift gillnets at one time or another, based on landing receipts for drift gillnet vessels landing albacore and bluefin tuna, but not swordfish. Vessels fishing small mesh drift gillnet gear would be restricted to landing HMS only as an incidental catch. The economic impact on the four vessels that have been documented as using small mesh drift gillnets amounts to between 20 percent and 48 percent of gross receipts. These vessels landed between 1.0 and 15.0 mt of albacore and 0.0 to 3.0 mt of bluefin tuna during the 2001 season. The vessels might make up for the lost revenue through other small mesh gillnet fisheries or simply return to using large mesh nets because all four vessels also currently possess permits for use of the larger mesh gear. Vessels currently fishing large mesh nets would suffer no economic loss under this alternative as they would not need to modify their gear or current fishing practices. The opportunity for albacore surface hook-and-line vessels to deploy small mesh drift gillnet gear to target albacore while on overnight trips would be preempted under this alternative. Loss of this opportunity would prevent realization of potential efficiency gains from landing more albacore per unit of time on the water.

For drift gillnet vessels using nets with 14-inch (35.56-cm) or greater stretched mesh, the FMP adopts all Federal conservation and management measures in place under the MMPA and ESA; adopts all state regulations for drift gillnet fishing under Magnuson-Stevens Act authority, except the states' limited entry programs, which will remain under state authority; modifies an Oregon closure inside 1000 fathoms to be in effect year round; closes U.S. EEZ waters off Washington to all drift gillnet vessels; and includes provisions (as in current ESA regulations) to establish a turtle protection closure north of Point