

## Classification

NMFS has determined that this proposed rule is consistent with the ESA and other applicable laws.

The impacts of this proposed action and alternatives are evaluated in accordance with the National Environmental Policy Act as the High Seas Pelagic Longline Alternative 3 in the EIS prepared by the Council (see **ADDRESSES**).

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

This proposed rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

The Council prepared a combined RIR/IRFA that describes the economic impacts of the Council's FMP, which includes an analysis of this proposed action as High Seas Pelagic Longline Alternative 3. The RIR/IRFA is available

from the Council (see **ADDRESSES**). A summary of the RIR/IRFA follows:

The **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this proposed rule provide a description of the action, why it is being considered, and the legal basis for this action. That information is not repeated here.

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.

This regulation imposes controls on the fleet of approximately 22–25 longline vessels that fish principally out of California ports for swordfish and associated species. A total of 28 vessels

participated in the West-coast-based pelagic longline fishery during 2002, down from a peak of 43 vessels in 2001 and from 38 vessels in 2000. All of these vessels would be considered small businesses under the SBA standards. Therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action. For most of the longline vessels involved, swordfish caught by longline gear makes up more than half the total revenue from fish sales. Table 1 presents total ex-vessel revenue and dependence on swordfish landings for the 38 West coast-based vessels with high seas pelagic longline swordfish landings in 2001, broken down by the number of vessels with varying percent dependence on swordfish. NMFS believes these data are representative of 2002 as well.

**TABLE 1: TOTAL EX-VESSEL REVENUE AND DEPENDENCE ON SWORDFISH FOR 38 WEST-COAST-BASED VESSELS WITH HIGH SEAS PELAGIC LONGLINE LANDINGS IN 2001.**

Number of Vessels	Dependence on High Seas Longline Caught Swordfish (category of swordfish revenue/total revenue)	Average Total Ex-vessel Revenue (\$/vessel)	Average Percent Longline Swordfish (swordfish revenue/total revenue)
4	< 50%	\$228,951	32.57%
3	50 - 70%	\$170,067	60.99%
3	> 70 - 80%	\$222,089	76.66%
4	> 80 - 90%	\$258,335	86.77%
13	> 90 - 95%	\$182,211	93.26%
11	> 95%	\$219,885	97.57%

The impacts of alternatives to this proposed action were evaluated in the Council's RIR/IRFA. The Council considered three alternatives for managing the high seas pelagic longline fishery. Under Alternative 1 (Status Quo), the FMP would not impose regulations on this fishery. The Council assumes that in the short-run, the fishery would continue to operate as it currently does, earning average annual profits of \$6.7 million. However, in the long-run, the Council expected that regulations would be established under other authorities, such that over time the fishery would disappear, and long-run profits would become zero as the fishery was phased out.

Alternative 2 (Council Proposed Action) would maintain the fishery, allowing fishermen to continue targeting swordfish east of 150° W. long., but impose some additional costs on longliners targeting swordfish on the high seas. Short-run average annual profits would remain at \$6.7 million, minus the cost of adopting turtle and sea bird mitigation measures, accommodating observers, and using

monitoring equipment. NMFS is developing guidelines for the design and performance standards of equipment required for the handling of incidentally caught sea turtles. The required tools can be purchased, for an estimated maximum cost of \$2,000 per vessel, but vessel owners may also be able use the guidelines to fabricate the equipment with lower cost materials. Vessel owners do not pay an observer's salary, but do bear costs associated with providing room and board for the observer. Additionally, carrying an observer may increase the cost of insurance that the vessel carries. Vessel monitoring equipment costs approximately \$2,000 to purchase and \$500 to install, and would require annual maintenance estimated to cost approximately 20 percent of the purchase price per year. However, despite the equipment costs, the fishery would be able to land swordfish, and so over 25 years, the present value of long-run profits relative to the status quo would range between \$78 and \$105 million, using 7 percent and 4 percent discount rates, respectively.

Alternative 3, which is the same as this proposed action, would prohibit fishermen from targeting swordfish east of 150° W. long. Swordfish are the target species of this fishery. This would effectively eliminate all but incidental swordfish landings and the short- and long-run profits currently associated with landing swordfish (\$6.7 million, and \$78 million to \$105 million, respectively), at least until alternative fishing opportunities are identified. This loss assumes that all vessels in this fishery cease fishing, although longline fishing targeting tuna out of West Coast ports or Hawaii may be an alternative. However, current participants in the fishery indicate that without being able to target swordfish, the high seas longline fishery originating from West Coast ports would cease to exist.

Although no fishery interactions with the endangered short-tailed albatrosses (*Phoebastria albatrus*) have been recorded to date, on September 22, 2003, NMFS initiated section 7 consultation under the ESA with the U.S. Fish and Wildlife Service for this species. On September 24, 2003, formal