

consultation with NMFS Protected Resources under the Endangered Species Act was initiated on the fisheries managed under the FMP, including the fisheries now permitted under the HSFA.

Based on the conclusions of the consultation, NMFS will determine if fishing activities under the FMP are likely to jeopardize the continued existence of endangered or threatened species under NMFS' jurisdiction. The results of this consultation will determine whether NMFS needs to implement the regulations outlined in this proposed rule in order to meet the requirements of the ESA. Based on analyses conducted during previous biological opinions, NMFS is concerned that the amount of take estimated to occur if fishing were managed under the Council's FMP might be likely to jeopardize the continued existence of leatherback and loggerhead sea turtles. Therefore, NMFS is proposing to implement a prohibition on shallow sets by West Coast-based pelagic longline vessels that has proven effective at reducing sea turtle encounters in the Hawaii-based pelagic longline fishery and the Atlantic pelagic longline fishery.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS is conferring with the States of California, Oregon, and Washington regarding this proposed rule. NMFS intends to continue engaging in informal and formal contacts with these States during the implementation of this proposed rule and review of the FMP.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: December 11, 2003.

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For the reasons set out in the preamble, 50 CFR parts 222 and 223 are proposed to be amended to read as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701; § 222.403 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 222.102, the following definitions are added alphabetically, to read as follows:

§ 222.102 Definitions.

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Basket-style longline gear means a type of longline gear that is divided into units called *baskets*, each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton or of nylon or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

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Pelagic longline gear means longline gear consisting of a main line that is suspended horizontally in the water column and not stationary or anchored, and from which dropper lines with hooks (gangions) are attached.

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PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9)

4. In § 223.206, a new paragraph (d)(9) is added to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(9) *Restrictions applicable to Pacific pelagic longline vessels.* In addition to the general prohibitions specified in

§ 600.725 of Chapter VI, it is unlawful for any person who is not operating under a western Pacific longline permit under § 660.21 to do any of the following:

(i) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear deployed on the high seas of the Pacific Ocean north of the equator (0° lat.).

(ii) Possess a light stick on board a longline vessel when fishing on the high seas of the Pacific Ocean north of the equator.

(iii) Possess a light stick on board a longline vessel on the high seas of the Pacific Ocean north of the equator. 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.

(iv) Possess more than 10 swordfish on board a longline vessel from a fishing trip where any part of the trip included fishing in the Pacific Ocean north of the equator (0° lat.).

(v) An operator of a longline vessel subject to this section may land or possess no more than 10 swordfish from a fishing trip where any part of the trip included fishing east of 150° W. long. and north of the equator (0° N. lat.).

(vi) Fail to employ basket-style longline gear such that the mainline is deployed slack when fishing on the high seas of the Pacific Ocean north of the equator.

(vii) When a conventional monofilament longline is deployed by a vessel subject to this section, no fewer than 15 branch lines may be set between any two floats. Vessel operators using basket-style longline gear must set a minimum of 10 branch lines between any 2 floats when fishing in waters north of the equator.

(viii) Longline gear deployed by a vessel subject to this section must be deployed such that the deepest point of the main longline between any two 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.

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