

Amendment 3

**Fishery Management Plan for the
Pelagic Fisheries of the Western Pacific Region**

*(includes Regulatory Impact Review and
Proposed Regulations)*

June 4, 1991

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1.0 INTRODUCTION

1.1 Responsible Agencies

The Western Pacific Regional Fishery Management Council (Council or WPRFMC) was established by the Magnuson Fishery Conservation and Management Act to develop Fishery Management Plans (FMPs) for fisheries operating in the US Exclusive Economic Zone (EEZ) around American Samoa, Guam, Hawaii (including the Northwestern Hawaiian Islands), the Northern Mariana Islands, and other US possessions in the Pacific¹. Once an FMP is approved by the Secretary of Commerce (Secretary), it is implemented by federal regulations which, in turn, are enforced by the National Marine Fisheries Service (NMFS) and the US Coast Guard, in cooperation with state and territorial agencies.

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1.2 Public Review and Comment

The Council elicits the help of commercial and recreational fishing interests, as well as other interested parties. This ensures that those who might be affected by new management measures have an opportunity to submit ideas and suggestions for potential actions by the Council, and to be involved in the decision-making process.

The action proposed by this amendment was developed by the Council, NMFS, US Fish and Wildlife Service (USFWS), State of Hawaii, and the US Coast Guard. It was reviewed by the Scientific and Statistical Committee and the industry Advisory Panel. A draft of the amendment was distributed for comments to fishermen and other interested parties in April, 1991. The final document is responsive to comments received, and the Council considered these comments at its May 15-16, 1991, public meeting. The comments were incorporated into the amendment, which has been submitted to the Secretary for approval and implementation. The approval process will include publication of the proposed regulations for public review and comment. A draft of the regulations is included in this amendment.

¹ *Howland and Baker Islands, Jarvis Island, Johnston Atoll, Kingman Reef and Palmyra Island, and Wake Island.*

1.3 List of Preparers

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2.0 EXISTING MANAGEMENT MEASURES

The FMP for the pelagic species of the Western Pacific was developed by the Council and its regulations were published by the NMFS at 52 FR 5987 on February 17, 1987, and amended at 53 FR 24644 on June 29, 1991. The regulations applied to domestic and foreign fishing for billfishes, wahoo, mahimahi and oceanic sharks, and completely prohibited drift gillnet fishing. Additional provisions provided for experimental fishing permits that would allow the harvest of management unit species.

At the request of the Council, the NMFS published at 55 FR 49285 (November 27, 1990) an emergency interim rule that placed regulatory conditions on longline vessels that included permitting and logbook requirements, and required the placement of observers if a vessel intended to fish within 50 nm of certain islands of the NWHI and was requested to do so by the NMFS Regional Director (RD). This emergency interim rule resulted from the growth of the longline fishery and concerns that growth would have an adverse impact on fish stocks, on other fisheries and on protected species, including Hawaiian monk seals, sea birds and sea turtles.

The rapid growth of the Hawaii-based longline fishery led the Council to request additional emergency management actions to 1) place a moratorium on the entry of new longline vessels into the Hawaii fishery so that data collection and analyses could catch up with the growth of the fishery. This 90-day emergency interim rule took

effect on April 12, 1991 (56 FR 14866). Amendment 4 (in preparation) to the Pelagics FMP intends to extend the moratorium for a total of three years.

The Council also requested the Secretary to close to longline fishing, on an emergency basis, certain areas within 50 or 75 nm of the main Hawaiian Islands. This action is intended to minimize gear conflicts and vessel safety issues arising from interactions with small fishing boats. This request is under review by the NMFS and Secretary.

The Secretary recently approved a request by the Council for emergency action to protect endangered and threatened species. Published by the NMFS at 56 FR 15842 on April 18, 1991, the emergency action established a Protected Species Zone (PSZ) in the NWHI for a period of 90 days, starting on April 15, 1991. Pelagic longline fishing is prohibited in this zone. Amendment 3, if approved, would extend indefinitely the period of the emergency action. At its May 15-16, 1991 meeting, the Council voted to extend the period of the emergency action an additional 90 days.

3.0 BACKGROUND AND NEED FOR ACTION

3.1 Longline Fishery for Broadbill Swordfish

Prior to 1987, Hawaii's longline fleet annually landed less than 30,000 lb of broadbill swordfish, a by-catch of the tuna longline fishery. In 1989, swordfish landings were about 500,000 lb; in 1990 the total landings of swordfish were expected to exceed 3 million lb. The development and rapid growth of the swordfish fishery in Hawaii can be attributed to three events: the decline of that fishery on the US Atlantic coast², the discovery of harvestable quantities of swordfish off the Hawaiian Islands, and the successful operation of US east-coast longlining techniques (including the use of monofilament mainline) in Hawaiian waters. At present, the Hawaiian longline fishing fleet is comprised of about 155 vessels. Approximately 20 of these vessels have been recorded as targeting swordfish in the NWHI.

Swordfish fishermen generally look for areas with sharp gradients of temperature and salinity on which to set their longlines. A typical set consists of 10 -30 mi of monofilament line having as many as 1000 branch lines, or gangions, with an equal number of hooks. The leader line is relatively short, 30 - 60 ft long, to which is attached a "light stick" (chemical luminescent lure) about 30 in above a broad, flat hook (8/0 - 9/0 Mustad). Whole squid are the preferred bait for catching swordfish. Gear is typically set in the evening and retrieved the next morning.

² *The adult biomass of the swordfish population in the western North Atlantic has declined significantly as a result of high fishing mortality [see Draft Amendment No. 1 to the FMP for Atlantic Swordfish, 1989].*

The major fishing grounds for swordfish in the central Pacific (traditionally exploited by foreign longliners) lie approximately 1000 mi north of the Hawaiian Islands (25° - 40°N). Domestic longliners using east-coast fishing methods operate closer to the islands, especially off the NWHI around 66 Fathom Bank near French Frigate Shoals, St. Rogatien and Brooks Banks, and Gardner Pinnacles. Hawaiian swordfish may be part of a single Pacific-wide stock, or possibly a northwest Pacific stock. Although they occur year-round off the Hawaiian Archipelago, swordfish exhibit a distinct pattern of seasonal abundance. They are caught most frequently from March through September, which is probably related to spawning behavior and the distribution of water temperature. Biologists believe that the swordfish begin migrating southward from the central north Pacific area in late winter, along the NWHI toward the main Hawaiian Islands, and return northward along the NWHI in the fall. The maximum sustainable yield of swordfish on a Pacific-wide basis is estimated at 40 million lb.

3.2 Hawaiian Monk Seal

Hawaiian monk seals are currently found throughout the Northwestern Hawaiian Islands (NWHI), specifically at Kure Atoll, Midway Islands, Pearl and Hermes Reef, Lisianski Island, Laysan Island, French Frigate Shoals, Necker Island, and Nihoa Island. Monk seals are less frequently observed at Gardner Pinnacles and Maro Reef and are also seen infrequently in the waters and on beaches in the main Hawaiian Islands. The relatively isolated atolls and islands of the NWHI comprise the only current terrestrial habitat of the Hawaiian monk seal. The sandy beaches of many of these islets are backed by vegetation at the beach crest, and provide haul-out, pupping and nursing areas for the seals. Adult females with pups appear to prefer beaches with shallow protected waters where their pups learn to swim and feed in relative safety from sharks and strong sea conditions. Protected nearshore waters, even without protective vegetation, provide areas critical for successful rearing and acclimation of pups to the ocean environment.

Pupping occurs regularly on the islands and islets at French Frigate Shoals, Laysan Island, Lisianski Island, Pearl and Hermes Reef, and Kure Atoll. Most pups are born between March and June, but births have been recorded throughout the year. Although mature female monk seals usually pup every one or two years, the reproductive rate for this species is low when compared to other species of seals and sea lions.

Hawaiian monk seals do not congregate in large numbers as do most other seals, but haul out individually or in small groups. Also, reproductive males do not form harems like some other seals and sea lions; instead, they patrol sections of beach from the water searching for receptive females. Mating has only been observed in nearshore waters. When at breeding islands, monk seals feed on octopuses, spiny lobster, eels and reef fishes, indicating that they are opportunistic feeders. These items have been identified from scat samples and regurgitated material found on the beach. Although

little is known about the depths at which Hawaiian monk seals feed, studies of the seals' diving behavior have shown that adult males will dive to at least 120 m (394 ft) to feed. The green fur that is apparent on many seals results from algae that grows on the fur which attests to prolonged periods spent at sea. Their distribution, destinations, routes, food sources and reasons for the movements, when not traveling between islands, are poorly understood.

Counts of hauled seals are the principal data which indicate that the population has declined since surveys were begun in 1957. The highest count for all atolls in 1982 is only about 50% of the highest counts made in 1957-58. The mean beach counts made in 1989-90 also show a decline, much of which is a result of low pup counts in 1990. Additional cause for concern is found in the continuing decline of total minimum pup counts over recent years from 224 in 1988, to 195 in 1989³, to 145 in 1990. These seals are listed as Endangered under the Endangered Species Act, and the NMFS has also designated Critical Habitat for the seals in the NWHI.

3.3 Interaction Between Longline Fishery and Hawaiian Monk Seals

As of June 4, 1991, nine monk seals with evidence of injuries resulting from interactions with longline fishing operations have been reported or observed. Six of these seals were observed on Tern Island, French Frigate Shoals, with jaw or head injuries inconsistent with natural causes. Another seal was seen with a longline hook imbedded in its chest with 30 ft (9.2 m) of monofilament leader attached. Yet another was observed ashore on Tern Island with a longline hook in its mouth. A juvenile seal with a bleeding head injury and trailing monofilament line from its mouth was reported to the USFWS by a fishing vessel northwest of French Frigate Shoals on January 23, 1991.

These injuries may represent only a part of the problem. Some monk seals that were injured by fishing operations may have died at sea. Others may have been injured and hauled out at other islands where they would not be observed. Even under the best conditions, if seals were snagged or entangled only occasionally and released alive, the risks of injury and mortality from drowning, perforation by hooks of the gastrointestinal tract, or infection and septicemia from hooking or snagging would still be considerable. Any mortality resulting from these interactions would adversely affect the conservation and recovery of the endangered Hawaiian monk seal. In December 1990 and January 1991, 19 longline vessels fished within the 50-nm study zones in the NWHI, but there are also allegations of additional vessels fishing there illegally.

³ This number includes an estimate of 20 pups from Lisianski Island as an average from previous years since Lisianski Island was not surveyed in 1989.

3.4 Need for Action

Until recently, interactions between monk seals and the longline fishery in the NWHI were not believed to be a problem. Initial consultations for the Pelagics FMP under Section 7 of the Endangered Species Act concluded that the fishery would not likely jeopardize the continued existence of the Hawaiian monk seal, as long as certain gear and reporting requirements were included in the implementing regulations for the fishery. There was not a significant domestic longline fishery in the NWHI at that time, but recent events indicate that interactions between monk seals and the longline fishery may be occurring at a level and in a manner not envisioned in earlier consultations.

As a result of this new information, the Council sponsored an inter-agency task force meeting of the NMFS, USFWS, State of Hawaii Department of Land and Natural Resources, US Coast Guard and the Council. The task force recommended closing the area where monk seals were active to longline fishing. The Council and the NMFS Southwest Region then co-sponsored a public hearing in Honolulu, Hawaii, on February 26, 1991, to solicit public testimony on the need for and types of regulatory controls that could be instituted to prevent future takings of Hawaiian monk seals by the longline fishery. Representatives of several environmental groups stated that they favored closures of 50 mi or more to guarantee no takings of monk seals. They also proposed the imposition of mandatory observer coverage in a buffer zone around the NWHI. Several representatives of the fishing industry indicated they believed that interactions were rare and would be limited to waters much closer to islands. They felt that a closure of 20 - 30 mi would be sufficient, with observer coverage out to 50 mi to obtain better data on whether any interactions would occur beyond the closed area. There was general agreement on the need for more effective surveillance of the area to enforce whatever closures were implemented.

There is compelling evidence that longline fishing around the NWHI has resulted in the incidental take of Hawaiian monk seals. This taking is not permissible under the Endangered Species Act. The Secretary has an obligation to exercise his authority to conserve endangered species, and agrees that the actions of this amendment are likely to contribute to such protection. This amendment would make permanent the closures that were implemented by the previous emergency action.

4.0 PROPOSED ACTION AND IMPACTS

4.1 Proposed Action

- (1) Initially designate a Protected Species Zone (PSZ) to consist of all waters within 50 nm of the islands and atolls of the NWHI from Kure Atoll to Nihoa Island, as well as certain corridors between those islands that are more than 100 nm apart (see Fig. 1).

This amendment continues the definition of Protected Species Zone contained in the emergency interim rule. The PSZ covers all nearshore areas where interactions are believed to have occurred.

- (2) Establish a process by which the NMFS RD, in consultation with the Council, can designate fishery conservation and management measures needed in the PSZ to safeguard protected species.

This amendment continues the prohibition on longline fishing within the PSZ and maintains the notification requirement for transiting vessels (established in the emergency interim rule). The amendment also provides that the RD, in consultation with the Council, can modify the conservation and management measures in response to changes in the fishery or new information on protected species. For example, new information might indicate that interactions are occurring beyond the PSZ. In this case, the RD might consult the Council and designate increase the size of the PSZ, or establish an observer program for another area beyond the PSZ. This allows for management responses that are faster than the FMP amendment process.

4.2 Impacts of Proposed Action

This action is intended to protect and conserve endangered Hawaiian monk seals by eliminating incidental takings by the longline fishery in the NWHI.

An insight into the potential social and economic impacts on the longline fleet can be measured by preliminary data from fishing logbooks during the period December 1, 1990 to January 31, 1991, the first two complete months of the federal logbook program. Of the 112 vessels that reported longline catches around Hawaii, only 19 fished in the 50-nm study zones around the NWHI. These 19 vessels made 103 sets in the study zones, only 6% of the total 1667 sets made by all Hawaii-based vessels. Of the total fish landed in this two-month period, 2343 were caught in the 50-nm study zones (6.8% of the total 34,482 caught). About 6.5% of the bigeye tuna were caught within the study zones (601 of 9871), and less than 24% of the swordfish were caught inside the study zones (1191 of 5024).

This period is believed to have been the period of the heaviest fishing for swordfish in the NWHI, so the annualized catch from the study zones is expected to be relatively much less important. The impacts of displacing the fleet from the proposed 50-nm PSZ on a year-round basis, therefore, would be less consequential. Thus, establishing the PSZ would have relatively minor impacts on the operations of the highly mobile longline fleet.

4.3 Vessel Safety Considerations

Vessel safety has been identified as a minor issue in the proposed actions, and the amendment was modified to accommodate the concerns. Allowing longline vessels to enter the PSZ (with proper notification) will accommodate those vessels that need to seek shelter, or transit the zone, for reasons of safety and other emergencies. The Council has requested the US Coast Guard to review this amendment from the standpoint of vessel safety.

4.4 Monitoring of Proposed Action and Possible Council Responses

All longline vessels that land fish in Hawaii are required to have a federal permit and provide completed logbooks to the NMFS after each fishing trip. The logbooks provide information on, among other things, catch, effort and fishing location. In addition, vessels transiting the PSZ would be required to report upon entry and exit of the zone. Any violation of the above reporting requirements would, at present, have to be detected by occasional patrols by USCG surface ships or aircraft. The Council is now pursuing a remote system for indicating vessel position which would provide a more efficient enforcement program. Violators would face civil and criminal penalties under the Magnuson Act. If the logbook information shows that protected species are being taken outside of the zone, or if the conservation and management measures are inadequate to preserve protected species, the RD may adjust the zone, modify reporting requirements, require observers, or take other action to protect these species.

5.0 REJECTED ALTERNATIVES

Three alternatives to the proposed action have been identified: (a) implementing an area closure for longline fishing greater than 50 nm around the NWHI, (b) implementing an area closure for longline fishing less than 50 nm around the NWHI, and (c) no action.

- (a) Longline fishing closure greater than 50 nm around the islands and atolls of the NWHI.

Under this alternative, longline fishing within the management area would be prohibited at some distance greater than 50 nm from the islands and atolls of the NWHI. Hawaiian monk seals travel between islands in the NWHI and, on occasion, travel great distances as evidenced by observations of seals at Wake Island, Palmyra Island and Johnston Atoll. Based, however, on at-sea sightings for monk seals in the NWHI and what is known about the seals' foraging behavior and habitat, interactions with the longline fishery at distances greater than 50 nm from the centers of monk seal activity in the NWHI appear unlikely. While a larger closure would provide a greater safety buffer between monk seals and longline fishing activities, such action is not

supported by available information. This amendment does provide a process by which the area of the PSZ can be changed, if necessary.

(b) Longline fishing closure less than 50 nm around the NWHI.

This alternative is similar to measures advocated by industry representatives at the February 26th public hearing. They felt that monk seal/longline interactions occurred very close to shore and that closures of 20-30 mi would be sufficient to control the situation. However, a 20-30 mile closure would not include many of the offshore banks where monk seals forage, or the corridors between islands. A closure of less than 50 nm around the NWHI, therefore, does not appear to be sufficient to physically separate the longline fishery from monk seals.

Both (a) and (b) are less desirable than the proposed action because they do not provide flexibility to adjust the size of the PSZ or the conservation and management measures in the PSZ without the burden of an FMP amendment.

(c) No Action

This alternative, which maintains the current permit system for longline fishing vessels, logbook requirement, and notification for placement of observers when intending to fish within the 50-nm study zones, does not alleviate the problem of incidental take of Hawaiian monk seals by the longline fishery in the NWHI. This option is rejected because it is not consistent with the intent of the Endangered Species Act.

6.0 RELATIONSHIP OF AMENDMENT 3 TO OTHER APPLICABLE LAWS AND POLICIES

6.1 Administrative Procedure Act

The Council's proposed rule will be published for public comment after the NMFS receives the amendment and regulations. At this time, the Secretary has not determined that the amendment is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views and comments received during the comment period.

6.2 Coastal Zone Management Act

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Hawaii. This determination has been submitted for review by the responsible state agency under Section 307 of the Coastal Zone Management Act.

6.3 Executive Order 12291 (issuance of new rules)

The NOAA Administrator has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis. That is, the proposed action will not have an affect on the economy of more than \$100 million, there will be no major increase in costs or prices for consumers, individual industries or government agencies, and there will be no significant adverse effect on competition, employment, investment, productivity, or ability of US industries to compete with foreign enterprises.

6.4 Endangered Species Act

Conflicts between endangered species and fisheries covered by the Pelagics FMP prompted the Council to develop the proposed rule. The Council has concluded that the proposed action is not likely to jeopardize the continued existence of any listed species, or adversely affect any critical habitat for those species. The Council has submitted this determination to the NMFS for formal review under Section 7 of the Endangered Species Act.

6.5 Marine Mammal Protection Act

The Council developed the proposed rule as a result of conflicts with marine mammals under the jurisdiction of the DOC (Marine Mammal Protection Act). All Hawaii fisheries, including the pelagic longline fishery, fall into Category 3 meaning that fishermen must report interactions with marine mammals, but are not required to obtain exemption certificates in order to fish. Because the proposed action is designed to eliminate interactions, the Council has determined that reclassification of the pelagic longline fishery is not necessary. The Council has submitted this determination to the NMFS for review under Section 114 of the Marine Mammal Protection Act.

6.6 National Environmental Policy Act

The Council prepared an environmental assessment for the Emergency Interim Rule that this amendment proposes to make permanent. That EA concluded that there will be no significant impact on the environment, and was the basis for a Finding of No Significant Impact. There is no new information that would lead the Council, NMFS or Secretary to arrive at contrary conclusions for this amendment. Thus, this action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

6.7 Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act (transit notification). A request for clearance to collect this information has been submitted to the Office of Management and Budget for approval.

6.8 Regulatory Flexibility Act (see Section 7.0)

The Council prepared a regulatory impact review which concludes that this rule will have minor economic impacts. This review is found in Section 7.0 below. The Council proposes that the General Counsel of the Department of Commerce can certify to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Only a small percentage of the businesses would be affected and the costs of compliance, in terms of potential revenues lost, recordkeeping, the competitive position of these businesses relative to larger entities, and the ability of these businesses to remain in the market, are not significant. As a result, a regulatory flexibility analysis was not prepared.

6.9 Executive Order 12612 (federalism)

The Council has not identified any federalism issues relative to the action proposed in this amendment. The affected state has been closely involved in developing the proposed management measure, and the principal state officials responsible for fisheries management have not expressed federalism-related opposition to adoption of this amendment. The view of the Council, therefore, is that preparation of a federalism assessment not necessary.

6.10 Executive Order 12630 (takings implication)

The Council has determined that the actions proposed in this amendment will not significantly affect the use of any real or personal property.

6.11 Indigenous Peoples' Fishing Rights

There is no formal agreement between the US government and the indigenous people of the region (i.e., native Chamorros, Hawaiians and Samoans) that allocates preferential fishing rights to native people. The necessity and legal possibility of granting such rights are being investigated, however, and if indigenous people are awarded special considerations, the FMP may require revision. At present, Amendment 3 does not appear to affect any native Chamorro, Hawaiian or Samoan cultural or religious practices.

7.0 REGULATORY IMPACT REVIEW

SUMMARY OF PROPOSED ACTION:

The Council has requested the Secretary of Commerce to approve, and publish regulations that implement, Amendment 3 to the FMP for pelagic fisheries. The amendment would prohibit longline fishing within a Protected Species Zone (PSZ), initially designated as a 50-nm radius around the NWHI, including 100-nm wide corridors between islands where these 50-nm areas are not contiguous. Longline fishing vessels transiting this zone would be required to notify the NMFS Southwest Region Law Enforcement Office immediately upon entering and departing the zone. These measures are needed because current regulations do not provide a means to eliminate interactions between Hawaiian monk seals and the longline fishery in the NWHI. The amendment also establishes a process by which the NMFS RD, in consultation with the Council, can modify the boundaries of the PSZ and change the conservation and management measures needed to safeguard monk seals and other protected species. This regulatory impact review has been prepared to evaluate the potential impacts of the proposed action.

PURPOSE AND NEED FOR ACTION:

Details of the Hawaii longline fishery and history of interactions with monk seals are found in Section 3.0 above. Evidence exists that longline fishing around the NWHI has resulted in the incidental harm of Hawaiian monk seals. This is not permissible under the Endangered Species Act.

MANAGEMENT OBJECTIVE:

The major objective of the proposed action is to close areas within 50 nm of the NWHI from Kure Atoll to Nihoa Island to domestic longline fishing. Included in the action's closed areas are migration corridors that are used by monk seals when swimming between islands. This action is intended to protect and conserve the endangered Hawaiian monk seal by eliminating incidental takings by the longline fishery in the NWHI. Further, the amendment intends to provide for rapid adjustments to management measures that protect monk seals and other species, if new information warrants such action.

ALTERNATIVES TO THE PROPOSED ACTION:

Three alternatives to the proposed action have been identified and rejected: 1) closure greater than 50 nm around the NWHI, 2) closure less than 50 nm around the NWHI, and 3) no action.

ANALYSIS OF ALTERNATIVES:

a) Proposed Action

An insight into the potential social and economic impacts on the longline fleet can be measured by preliminary data from fishing logbooks during the period December 1, 1990 to January 31, 1991, the first two complete months of the federal logbook program. Of the 112 vessels that reported longline catches around Hawaii, only 19 fished in the 50-nm study zones around the NWHI. These 19 vessels made 103 sets in the study zones, only 6% of the total 1667 sets made by all Hawaii-based vessels. Of the total fish landed in this two-month period, 2343 were caught in the 50-nm study zones (6.8% of the total 34,482 caught). About 6.5% of the bigeye tuna were caught within the study zones (601 of 9871), and less than 24% of the swordfish were caught inside the study zones (1191 of 5024).

This period is believed to have been the period of the heaviest fishing for swordfish in the NWHI, so the annualized catch from the study zones is expected to be relatively much less important. The impacts of displacing the fleet from the proposed 50-nm PSZ on a year-round basis, therefore, would be less consequential. Thus, establishing the PSZ would have relatively minor impacts on the operations of the highly mobile longline fleet.

The actual economic impacts of displacing the portion of the longline fleet that would occasionally fish within 50 nm of the NWHI cannot be determined at this time. The federal logbook program is in its infancy and the marketing characteristics of the fishery have changed dramatically in the past year, so detailed economic analyses will not be available for some time. We expect the negative impact of the proposed small displacement of the fleet from the PSZ to be minor in comparison with the benefits of preserving the endangered Hawaiian monk seal and its habitat.

b) Longline fishing closure greater than 50 nm around the NWHI.

Under this alternative longline fishing within the management area would be prohibited at some distance greater than 50 nm from the islands and atolls of the NWHI. Hawaiian monk seals travel between islands in the NWHI and, on occasion, travel great distances as evidenced by observations of seals at Wake Island, Palmyra Island, and Johnston Atoll. Based, however, on at-sea sightings for monk seals in the NWHI and what is known about the seals' foraging behavior and habitat, interactions with the longline fishery at distances greater than 50 nm from the centers of monk seal activity in the NWHI appear unlikely. While a larger closure would provide a greater safety buffer between monk seals and longline fishing activities, such action would place un-needed physical and economic restrictions on the Hawaii longline fleet, and is not supported by available information. Part of the proposed action will allow the NMFS RD, in consultation with the Council, to adjust the size of the PSZ if needed.

c) Longline fishing closure less than 50 nm around the NWHI.

There are no data for analyses of the effect of a closure less than 50 nm, as there are no data available on at-sea interactions, but a 20-30 mile closure would not include many of the offshore banks where monk seals forage, or the migratory corridors between islands. A closure of less than 50 nm around the islands and atolls of the NWHI, therefore, does not appear to be sufficient to physically separate the longline fishery from monk seals, and is inconsistent with the intent of the Endangered Species Act.

d) No Action.

This alternative does not alleviate the problem of incidental take of Hawaiian monk seals by the longline fishery in the NWHI, and is inconsistent with the intent of the Endangered Species Act.

8.0 PROPOSED REGULATIONS

50 CFR part 685 would be amended as follows:

1. The authority citation for part 685 continues to read as follows:

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

2. Effective from 0001 hours local time on [insert date of publication in the FEDERAL REGISTER], in §685.2, the following definitions are added in alphabetical order to read as follows:

§ 685.2 Definitions.

* * * * *

Northwestern Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161° west longitude.

* * * * *

3. Effective from 0001 hours local time on [insert date of publication in the FEDERAL REGISTER], in §685.5 paragraph (l) is revised to read as follows:

§685.5 Prohibitions

* * * * *

- (l) Fish for pelagic species with longline gear within the protected species zone in the Northwestern Hawaiian Islands as defined in Section 685.2.

Figure 1. Protected species zone (not intended for navigation).

APPENDIX 1. Text of proposed regulations

Billing Code: 3510-22

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No.]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce

ACTION: Proposed Rule -- Northwestern Hawaiian Islands Protected Species Zone

SUMMARY: The Secretary of Commerce (Secretary) issues this proposed rule to implement Amendment 3 to the Fishery Management Plan (FMP) for the Pelagic Fisheries of the Western Pacific Region. This proposed rule would prohibit longline fishing within 50 nm of certain Northwestern Hawaiian Islands (NWHI), as well as within certain corridors between these islands. This action is necessary as a result of changes in the pelagic longline fishery and reported interactions between this fishery and the endangered Hawaiian monk seal (*Monachus schauinslandi*). The intended action of this rule is to provide a buffer zone (Protected Species Zone) around the monk seal's activity centers and within their migratory corridors, which will eliminate incidental take of monk seals resulting from longline fishing operations. The proposed rule also establishes a process for adjusting the size of the Protected Species Zone and the conservation and management measures to protect monk seals and other protected species in the zone.

DATES: Written comments must be received by [insert date 30 days after date of filing at the Office of the FEDERAL REGISTER].

ADDRESSES: Copies of Amendment 3, which includes a regulatory impact review, may be obtained from, and comments should be addressed to, Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; or E.C. Fullerton, Director, NMFS Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, Protected Species Division, NMFS Southwest Region, Terminal Island, CA, (213) 514-6664; Eugene T. Nitta, Pacific Area Office, NMFS Southwest Region, Honolulu, HI, (808) 955-8831; or Kitty M. Simonds, Western Pacific Regional Fishery Management Council, Honolulu, HI, (808) 523-1358.

SUPPLEMENTARY INFORMATION:

The FMP for pelagic species was approved and implemented at a time when there were few apparent problems in the domestic fisheries for pelagic species. Until recently, interactions between monk seals and the pelagic longline fishery were not believed to constitute a problem in the NWHI. Initial consultations under Section 7 of the Endangered Species Act for the FMP for the Western Pacific Region's fisheries for pelagic species concluded that these fisheries would not likely jeopardize the continued existence of the Hawaiian monk seal if certain gear and reporting requirements were included in the implementing regulations for these fisheries. There was not a significant domestic longline fishery in the NWHI at that time, but recent events indicate that interactions between monk seals and the longline fishery may be occurring at a level and in a manner not foreseen in earlier consultations.

On November 27, 1990, at the request of the Western Pacific Fishery Management Council (Council), the NMFS published at 55 FR 49285 an emergency interim rule that placed restrictions on vessels with longline gear on board that included, but were not limited to, permit requirements, logbooks, fishing information, and observers if requested by the NMFS RD and if the vessel intended to fish within 50 nm of certain NWHI. The November 27, 1990, emergency interim rule was promulgated as a result of a growth in the longline fishery and concerns that growth would have an adverse impact on fish stocks, on other fisheries, and on protected species, including Hawaiian monk seals, sea birds and sea turtles.

More recent information regarding incidental hooking and snagging of monk seals confirmed the occurrence of interactions with the longline fishery (K. McDermond, USFWS, pers. comm.). As of June 4, 1991 nine monk seals with evidence of injuries resulting from interactions with longline fishing operations have been reported or observed. Six of these seals were observed on Tern Island, French Frigate Shoals, with jaw or head injuries inconsistent with natural causes. Another seal was seen with a longline hook imbedded in its chest with 30 ft (9.2 m) of monofilament leader attached. Yet another was observed ashore on Tern Island with a hook in its mouth. A juvenile seal with a bleeding head injury and trailing monofilament line from its mouth was reported to the USFWS by a fishing vessel northwest of French Frigate Shoals on January 23, 1991.

These injuries may represent only a part of the problem. Some monk seals that were injured by fishing operations may have died at sea. Others may have been injured and

hauled out at other islands, where they would not be observed. Even under the best conditions, if seals were snagged or entangled only occasionally and released alive, the risks of injury and mortality from drowning, perforation by hooks of the gastrointestinal tract, or infection and septicemia from hooking or snagging would still be considerable. Any mortality resulting from these interactions would adversely affect the conservation and recovery of the endangered Hawaiian monk seal. In December 1990 and January 1991, 19 longline vessels fished within the 50-nm study zones in the NWHI, but there are also allegations of additional vessels fishing there illegally.

As a result of this new information, the Council sponsored an inter-agency task force meeting of the NMFS, USFWS, State of Hawaii Department of Land and Natural Resources, US Coast Guard and the Council. The task force recommended closing the area where monk seals were active to longline fishing. The Council and the NMFS Southwest Region then co-sponsored a public hearing in Honolulu, Hawaii, on February 26, 1991, to solicit public testimony on the need for and types of regulatory controls that could be instituted to prevent future takings of Hawaiian monk seals by the longline fishery. Representatives of several environmental groups stated that they favored closures of 50 mi or more to guarantee no takings of monk seals. They also proposed the imposition of mandatory observer coverage in a buffer zone around the NWHI. Several representatives of the fishing industry indicated they believed that interactions were rare and would be limited to waters much closer to islands. They felt that a closure of 20 - 30 mi would be sufficient, with observer coverage out to 50 mi to obtain better data on whether any interactions would occur beyond the closed area. There was general agreement on the need for more effective surveillance of the area to enforce whatever closures were implemented.

The Council subsequently met in an open session in Honolulu on February 27 - March 1, 1991, and discussed this issue further. The Council concluded that prohibiting longline fishing in waters within 50 nm of the NWHI, including a 100-nm corridor connecting islands that are farther than 100 nm apart, would be the appropriate action. In the Council's view, there was no evidence to suggest that there would be interactions beyond these boundaries. The Council requested, therefore, that the Secretary institute an emergency closure of these waters to longline fishing. The Secretary concurred with the proposal, and the emergency closure became effective on April 15, 1991 (published at 56 FR 15842).

The existing evidence is persuasive that longline fishing around the NWHI has resulted in the incidental take of Hawaiian monk seals. This taking is not permissible under the Endangered Species Act. The Secretary has an obligation to exercise his authority to conserve endangered species, and agrees that the actions of this proposed rule are likely to contribute to such protection. The Secretary also concurs that the conditions in the fishery and the status of the Hawaiian monk seal warrant permanent action under the authority of the Magnuson Act. This proposed rule would amend the

Pelagics FMP to make permanent the closures that were implemented by the previous emergency action.

CLASSIFICATION:

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub.L. 97-453, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 30 days of receipt of the amendment and regulations. At this time, the Secretary has not determined that the amendment is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views and comments received during the comment period.

The Council prepared an environmental assessment for the Emergency Interim Rule that this amendment proposes to make permanent. That EA concluded that there will be no significant impact on the environment, and contained a Finding of No Significant Impact. There is no new information that would lead the Council, NMFS or Secretary to arrive at contrary conclusions for this amendment. Thus, this action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

The NOAA Administrator has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. That is, the proposed action will not have an affect on the economy of more than \$100 million, there will be no major increase in costs or prices for consumers, individual industries or government agencies, and there will be no significant adverse effect on competition, employment, investment, productivity, or ability of US industries to compete with foreign enterprises.

This proposed rule is exempt from the procedures of E.O. 12291 under §8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub.L. 97-453, require the Secretary to publish this proposed rule 30 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Only a small percentage of the businesses would be affected and the costs of compliance, in terms of potential revenues lost, recordkeeping, the competitive position of these businesses relative to larger entities, and the ability of these businesses to remain in the market, are not significant. As a result, a regulatory flexibility analysis was not prepared. The Council prepared a regulatory impact review, which may be obtained from the Council at the address listed above.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (transit notification). A request to collect this information has been submitted to the Office of Management and Budget for approval.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Hawaii. This determination has been submitted for review by the responsible state agency under Section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and Recordkeeping Requirements.

Dated:

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

PART 685-PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

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

2. Effective from 0001 hours local time on [insert date of publication in the FEDERAL REGISTER], in §685.2, the following definitions are added in alphabetical order to read as follows:

§ 685.2 Definitions.

* * * * *

Northwestern Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161° west longitude.

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3. Effective from 0001 hours local time on [insert date of publication in the FEDERAL REGISTER], in §685.5 paragraph (l) is revised to read as follows:

§685.5 Prohibitions

* * * * *

- (l) Fish for pelagic species with longline gear within the protected species zone in the Northwestern Hawaiian Islands as defined in Section 685.2.