

prohibiting further retention of sablefish in the West Yakutat District by vessels fishing with trawl gear for the remainder of the fishing year.

After the effective date of this closure, sablefish in the West Yakutat District harvested with trawl gear must be treated in the same manner as a prohibited species and discarded.

#### Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

#### List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

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

Dated: October 9, 1991.

David S. Crestin,  
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

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#### 50 CFR Part 685

[Docket No. 910600-1251]

RIN 0648-AD99

#### Pelagic Fisheries of the Western Pacific Region

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

ACTION: Final rule.

**SUMMARY:** NOAA issues a final rule to implement Amendment 4 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). This rule would extend until April 1994 a moratorium on the issuance of new permits to participate in the Hawaii-based longline fishery for management unit species. This action is necessary to provide a period of stability for the fishery so that the Western Pacific Fishery Management Council (Council) and NMFS can complete a comprehensive, long-term management regime. The emergency moratorium now in place will expire on October 10, 1991, under the time limits set by the Magnuson Fishery Conservation and Management Act (Magnuson Act). This final rule will continue the requirements imposed by the emergency rule as modified.

**EFFECTIVE DATE:** This action becomes effective at 0000 hours local time October 10, 1991, and expires at 2400 hours local time on April 22, 1994, except for the requirements in § 685.15 (b)(2), (e)(5), and (f)(3) that documentation must be submitted

together with limited entry permit and permit transfer applications. Paragraphs (b)(2), (e)(5), and (f)(3) of § 685.15 contain a collection of information requirement subject to the Paperwork Reduction Act when approval from the Office of Management and Budget is obtained, an effective date for these paragraphs will be published in the Federal Register.

**ADDRESSES:** Copies of the amendment and environmental assessment are available from Kitty B. Simonds, Executive Director, Western Pacific Fishery Management Council, 1184 Bishop Street, suite 1405, Honolulu, HI 96813 (808-523-1388). Send comments on the proposed collection of information to the Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Paperwork Reduction Project 0648-0204, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213) 514-6660; or Alvin Katekara, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii (808) 955-6831.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the Council and approved and implemented by the Secretary of Commerce (Secretary) at a time when there were few problems in the domestic fisheries for management unit species (billfish and associated species). This is no longer the case. Due to rapid growth in the longline fishery in Hawaii, which targets on management unit species and tuna, there are serious concerns about the status of the stocks, the impact of increased longline catches on other fisheries, and interactions between longline fishing and protected species such as Hawaiian monk seals.

The Council has taken several actions to address these concerns. It established a control date for possible use in a limited entry program; adopted an FMP amendment establishing permit and logbook requirements for domestic longline and transshipping vessels using the fishery management area under the FMP (56 FR 24731, May 31, 1991); requested an emergency rule and approved an FMP amendment to close certain waters around the Northwestern Hawaiian Islands (NWHI) to longline fishing to protect Hawaiian monk seals; and requested an emergency rule imposing a moratorium on new entry into the longline fishery based in Hawaii. The reasons for these actions are described in considerable detail in the emergency rules published at 56 FR

14866 (April 12, 1991), 56 FR 15842 (April 18, 1991), 56 FR 28116 (June 19, 1991), 56 FR 28718 (June 24, 1991), and 56 FR 3730 (August 6, 1991), and in the proposed rule published at 56 FR 41643 (August 2, 1991) respectively, and will not be repeated here. Amendment 4, which this rule implements, continues the moratorium on new entry into the Hawaii-based longline fishery.

This amendment addresses three concerns: (1) That the dramatically increased level of longline fishing harvest from the portion of the exclusive economic zone (EEZ) around Hawaii may have an impact on the stocks of management unit species throughout their range; (2) that even if stocks are not affected on a stock-wide basis, the increased catches by U.S. longline vessels may adversely affect established commercial and recreational handline and troll fisheries; and (3) that the risk of adverse impacts on threatened and endangered species such as the Hawaiian monk seal will increase if the longline fleet grows. A moratorium on new entry will arrest the growth of the fleet, reduce the potential for increased catches that could affect stocks and local fisheries dependent on the availability of management unit species, and, in combination with the current area closures around the NWHI, minimize the risk of interactions with monk seals.

The extended moratorium (for a total of 3 years including the 8-month emergency moratorium period) is intended to provide a period of stability in the longline sector of the fishery while the Council and NMFS work with all fishery participants in developing a comprehensive, long-term management regime for the pelagic species fishery. The planning process includes substantial new data collection, supported by the general permit and logbook requirements now in place, and new data analyses to investigate the impacts of harvests upon the stocks and upon other fishery sectors. The long-range plan will be the subject of public hearings and Council meetings, and the Council will receive advice from its Plan Monitoring Team, Scientific and Statistical Committee, and Pelagics Advisory Subpanel.

The final rule reflects several changes from the proposed rule (56 FR 41643, August 22, 1991). The limited entry permit eligibility criteria discussed in the proposed rule are retained, but the final rule also reflects recent guidance from the Council concerning application and interpretation of the criteria. Permit eligibility criteria 7, 8, and 9 below are added as the result of this guidance.

Consequently, a limited entry permit (permit) will be issued to a person (including a partnership or corporation), for a particular vessel, who certifies and provides documentation to demonstrate that the person:

1. Owned the vessel when it made landings in Hawaii of longline-caught management unit species on or before December 5, 1990;

2. Owned the vessel when it engaged in transshipment of longline-caught management unit species in waters shoreward of the outer boundary of the EEZ around Hawaii on or before December 5, 1990;

3. Made a substantial financial commitment or investment (at least \$25,000) on or before December 5, 1990, for gear to equip the vessel, owned by that person and located in Hawaii on or before December 5, 1990, so that the vessel could participate in the longline fishery;

4. Made a substantial commitment or investment (at least \$25,000) on or before June 21, 1990, for the purchase or construction of a vessel for participation in the fishery, and intended at the time of the investment that the vessel would be used in the fishery;

5. Made a substantial financial commitment or investment (at least \$25,000) on or before June 21, 1990, in the refitting of a vessel for participation in the fishery and intended at the time of the investment that the vessel would be used in the fishery; or

6. Owned the vessel, properly permitted under the western Pacific crustacean regulations (50 CFR part 681), when it made landings of lobster from the Northwestern Hawaiian Islands in 1990;

7. Obtained a replacement vessel for a vessel that sank or was declared unseaworthy within 12 months before the start of the emergency moratorium (April 23, 1991), and for which its owner would have qualified for a permit had the vessel remained functional, provided application for a permit is made within 30 days of the effective date of this rule.

8. Obtained from an immediate family member (parent, spouse, child, sibling, adopted child) the vessel, for which its previous owner would have qualified for a permit had the previous owner retained the vessel; or

9. Obtained between December 5, 1990, and April 23, 1991 (inclusive) a vessel, for which its previous owner would have qualified for a permit had the previous owner retained the vessel.

Limited entry and general permits are required for vessels in Hawaii that have fishing gear on board and that fish for, transship, possess, retain, or land management unit species. General

permits are required for vessels that are categorized as receiving vessels (i.e., do not have fishing gear on board but have management unit species on board throughout the management area). The two types of permits are not interchangeable.

The rule provides that a person holding a limited entry permit under criteria 1-7 above may transfer the permit with the sale of the vessel one time during the 3-year moratorium period (April 1991 through April 1994). A person who obtains a permit through such a sale cannot re-transfer the permit with the vessel in this period. A person who obtains a permit through the purchase of a vessel must provide the same information to the Regional Director as if that person were an original permit applicant using the standard Southwest Region Federal Fisheries Permit Application Form, and the supplemental information sheet if a corporation or partnership owns the vessel. Permits obtained under criteria 8 and 9 are considered to have been obtained through exercise of the one-time transfer option in the rule. A person who obtains a permit under either of these criteria may not transfer that permit through transfer of the vessel during the moratorium period.

The rule provides that a permit may be held by a partnership or corporation for a vessel owned by the partnership or corporation, but that any change in 50 percent or more of the ownership of the holding partnership or corporation constitutes a transfer of the permit. Layering of corporations and partnerships will not prevent the application of this provision.

The rule provides that permits may be transferred with transfer of the ownership of the vessel in cases of extreme hardship such as death or terminal illness preventing the owner from participating in the fishery. The Regional Director determines whether an extreme hardship condition exists. A Pelagics Advisory Review Board established by the Council may be asked to recommend how the Council should advise the Regional Director in such situations.

Further, the holder of a permit may transfer the permit without limitation to a replacement vessel owned by that person as long as the Regional Director determines that the replacement vessel has a harvesting capacity that is comparable to the original vessel. Vessel length, range, hold capacity, gear limitations, and other factors will be considered in making determinations of comparability of different vessels' harvesting capacity.

A permit obtained through a transfer of ownership of the vessel will remain valid only if the new owner applies to the Pacific Area Office for a permit in the name of the transferee within 30 days of the recording of the ownership change on a Certificate of Documentation from the U.S. Coast Guard.

The rule requires a permit applicant to submit documentation with permit applications to establish that the applicant meets the eligibility criteria for permits. Documentation may include invoices and receipts for purchases of gear, contracts for refitting vessels, contracts for purchase or construction of vessels, lists of the owners of corporations or partnerships applying for permits and the share of the corporation or partnership that each individual person owns at the time of permit application, and evidence of vessel ownership by applicants. The specific information to be provided by each applicant (if any) cannot be determined in advance as each situation is likely to be different. This is necessary to ensure that permits are issued only to those who are owners meeting the permit eligibility criteria for the program.

Applicants must apply for permits within 90 days of the effective date of this rule, except for applicants under criterion 7 (for sunken/unseaworthy vessels), who must apply within 30 days. Applications submitted after these dates will not be considered. Persons holding permits under the current emergency rule will not be required to file applications for new permits under this rule.

Amendment 4 provides a framework by which the Council and NMFS can require that longline vessels, as a condition of obtaining permits or being exempted from permit requirements, must obtain, install, and make operational an automated vessel tracking system. This framework process would involve rulemaking procedures, including notice in the Federal Register, but would not require a separate FMP amendment.

The rule adds a definition of "fish dealer" and provides that fish dealers must make records of their transactions involving vessels regulated under this part available to authorized officers for inspection and copying. This is necessary to facilitate enforcement of the rule. Inspection and copying of records is often necessary to document unlawful fishing or landings by vessels without valid permits.

In addition, the rule eliminates paragraph (1) in § 685.5, which

prohibited vessel operators from failing to notify the Regional Director before fishing in the protected species zone. Because this zone is closed to longline fishing, this reference is outdated and needs to be removed from the regulatory text.

**Public Comments Received and Responses**

The only comments received from the public were from the Marine Mammal Commission, which supported implementation of the limited entry program and recommended completion of the test and analysis of the vessel tracking system.

**Classification**

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that Amendment 4 to the FMP and its implementing rule are necessary for the conservation and management of the pelagic fishery resources of the western Pacific region and are consistent with the Magnuson Act and other applicable law.

An environmental assessment (EA) was prepared for the emergency rule that led to the FMP amendment. The EA concluded that the moratorium would not have a significant effect on the human environment and was the basis of a Finding of No Significant Impact. There is no new information that would result in a different conclusion at this time. The Assistant Administrator has concluded that this action qualifies for a categorical exclusion from the requirement to prepare an EA.

The Assistant Administrator has determined that this is not a "major rule" requiring a regulatory impact analysis under Executive Order (E.O.) 12291. The final rule will not have a cumulative effect on the economy of \$100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. This determination is based on the regulatory impact review which is incorporated in the impact analysis in the amendment. The analysis demonstrates long-term benefits to the fishery under the proposed measures. The principal

burden to industry is associated with the submission of information to support permit applications. The estimated burden is about 2 hours per vessel, or not more than \$50, for compiling and submitting this information.

As described below, this rule will establish a new collection-of-information requirement subject to the Paperwork Reduction Act. This is a modification of the permit application system approved under OMB Control No. 0648-0204. This modification will require permit applicants to submit documentation to demonstrate that they meet one or more permit eligibility criteria. Under the emergency moratorium, applicants have not been required to submit such documentation. It has been up to NMFS to search records and make additional inquiries to resolve doubts in cases in which the applicant indicated having made investments above the minimum amount to qualify for permits but did not provide supporting documentation to demonstrate the amount of the investment or that the intent, when the investment was made, was to use the vessel in the Hawaii-based longline fishery. This has caused substantial difficulty for NMFS, as well as delays in processing permits. In addition, documentation to confirm ownership also has been difficult to trace in some cases. By requiring permit applicants to provide this documentation at the start of the process, it should be easier for NMFS to determine eligibility and issue permits, and applicants will face fewer delays in getting permits. The estimated burden under this collection is 2 hours per application to compile records, make copies where necessary, and submit them with applications. Some applications will require more time, while others will take less time.

In addition, this rule provides that a person holding a limited entry permit may transfer the permit (1) with the sale of the vessel one time during the combined 3-year moratorium period; (2) in cases of extreme hardship; or (3) to a replacement vessels owned by the same person(s) as long as the replacement vessel's harvesting capacity is comparable to the original vessel. Upon a change in vessel ownership, the transferee or partnership/corporation must apply to the Regional Director within 30 days after the date that the transfer provisions (§ 885.15 (e)(5) and (f)(3)) are made effective or 30 days after the date of the change in ownership, whichever is later, to have the permit issued in the transferee's name(s) and at that time provide documentation of any changes in ownership or vessel information. The estimated burden

under this collection is about 2 hours per transfer to compile satisfactory documentation and records of the transfer, make copies where necessary, and submit them with the transfer request.

A request for approval of these collections has been submitted to OMB. These collections will not become effective until approved by OMB and a notice to that effect appears in the Federal Register. Comments on the collections of information and/or suggestions on how to reduce these burdens can be sent to the Regional Director, Southwest Region, NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see ADDRESSES).

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

An informal consultation was conducted under section 7 of the Endangered Species Act (ESA) and it was determined that this action is not likely to adversely affect any endangered or threatened species listed under the ESA, nor will it adversely affect any critical habitat of any listed species.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Administrative Procedure Act (5 U.S.C. 553) requires that, generally, final rules be published not less than 30 days before they become effective. This 30-day period may be shortened or waived if the rulemaking agency published with the rule an explanation of what good cause justifies an earlier date. This rule, implementing Amendment 4 to the FMP, continues until April 22, 1994, the authority to require limited entry permits for longline fishing vessels in the longline fishery based in Hawaii implemented by emergency rule (56 FR 14868, April 12, 1991). However, the 30-day cooling-off period is being waived for good cause to ensure no lapse of regulations providing authority to require limited entry permits for longline fishing vessels in the longline fishery based in Hawaii.

**List of Subjects in 50 CFR Part 685**

Fisheries, Fishing, Reporting and Recordkeeping requirements.

Dated: October 9, 1991.

Samuel W. McKeen.

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

**PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC**

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

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

2. In § 685.2, new definitions for "Fish dealer" and "Substantial financial investment" are added, in alphabetical order, to read as follows:

**§ 685.2 Definitions.**

*Fish dealer* means any person who:

(1) Obtains, with the intention to resell, management unit species, or portions thereof, that were harvested or received by a vessel that holds a permit under this part or that is otherwise regulated under this part; or (2) provides recordkeeping, purchase, or sales assistance in obtaining or selling such management unit species (such as the services provided by a wholesale auction facility).

*Substantial financial investment* means documented expenditures, or a commitment (e.g., by contract), of at least \$25,000.

3. In § 685.5, paragraph (l) is removed, paragraphs (m) and (n) are redesignated (l) and (m), and new paragraphs (n) through (q) are added, to read as follows:

**§ 685.5 Prohibitions.**

(n) Receive management unit species on board a receiving vessel that is shoreward of the outer boundary of the EEZ around Hawaii from a longline vessel that does not have a valid limited entry permit.

(o) Except for receiving vessels, fish for, possess, retain, transship, or land, shoreward of the outer boundary of the EEZ around Hawaii, management unit species that were taken by longline gear, unless the vessel has on board a valid limited entry permit required under § 685.15.

(p) Transfer a limited entry permit in violation of § 685.15.

(q) Refuse to make available to an authorized agent for inspection and

copying any records that must be provided in accordance with § 685.17.

4. Section § 685.15 is added to subpart A to read as indicated below. The documentation requirements in paragraphs (b)(2), (e)(5), and (f)(3) will become effective upon approval by the Office of Management and Budget and publication of a notice to that effect in the Federal Register.

**§ 685.15 Limited entry permits.**

(a) Except for receiving vessels, any vessel of the United States shoreward of the outer boundary of the EEZ around Hawaii that uses longline gear to fish for management unit species, or that possesses, transships, or lands management unit species that were taken by longline gear, must have a limited entry permit under this section on board the vessel.

(b) *Application.* (1) Permit applications must be filed by January 14, 1992, except that an application for a permit under § 685.15(c)(7) must be submitted by November 15, 1991.

(2) A vessel owner, or an agent authorized in writing by a vessel owner to apply for a permit, must submit an application for a limited entry permit on a form provided by the Pacific Area Office at least 15 days before the desired effective date of the permit. The application must include documentation to:

(i) Identify the owner(s) of the vessel; and

(ii) Demonstrate that the vessel owner meets one or more of the eligibility criteria listed in paragraph (c) of this section.

(c) *Issuance.* The Regional Director will issue a limited entry permit under this section to a person for a specific vessel owned by that person if the Regional Director determines that the person: (1) Owned the vessel when the vessel landed longline-caught management unit species in Hawaii on or before December 5, 1990;

(2) Owned the vessel when it engaged in transshipment of longline-caught management unit species in waters shoreward of the outer boundary of the EEZ around Hawaii on or before December 5, 1990;

(3) Made a substantial financial investment on or before December 5, 1990, in longline gear for the vessel that was owned by that person and located in Hawaii on or before December 5, 1990;

(4) Made a substantial financial investment on or before June 21, 1990, for the construction or purchase of that specific new vessel and intended at the time of the investment that the vessel

would be used in the longline fishery based in Hawaii upon completion of construction or delivery of a purchased vessel:

(5) Made a substantial financial investment on or before June 21, 1990, in the refitting of a vessel for participation in the fishery, and intended at the time of the investment that the vessel would be used in the fishery upon completion of the refitting;

(6) Owned the vessel, which held a permit for 1990 under § 681.4 of this chapter and which is 1990 landed in Hawaii lobsters that were harvested from the Northwestern Hawaiian Islands;

(7) Obtained a replacement vessel for a vessel that was sunk or declared unseaworthy in the twelve months prior to April 23, 1991, and for which its owner would have been eligible to obtain a limited entry permit had the vessel remained functional;

(8) Obtained through a transfer of ownership from an immediate family member (parent, spouse, child, sibling, or adopted child) a vessel for which the previous owner would have been eligible to obtain a limited entry permit; or

(9) Obtained in the period December 5, 1990, through April 23, 1991, inclusive, a vessel from a person who would have been eligible for a limited entry permit under one or more of the criteria in paragraphs (c) (1) through (5) of this section.

(d) *Duration.* Permits issued under this section expire at 2400 hours local time on April 22, 1994, unless revoked, suspended, or modified under 15 CFR part 904.

(e) *Transfer.* (1) A limited entry permit is valid only for the vessel for which it is issued, except insofar as transferring a permit is allowed by this paragraph (e).

(2) A limited entry permit issued under § 685.15(c) (1) through (7) can be transferred with the sale of the vessel for which it was issued only once after April 23, 1991. A limited entry permit issued under § 685.15(c) (8) or (9) may not be transferred with the sale of the vessel for which it was issued.

(3) Notwithstanding the provisions of paragraphs (e)(2) of this section, the Regional Director, in consultation with the Council, may allow the transfer of a limited entry permit in cases of extreme hardship such as death or terminal illness preventing the vessel owner from participating in the fishery.

(4) A limited entry permit issued under this section may, without limitation as to frequency, be transferred by the permit holder to a replacement vessel owned by that

person, provided that the Regional Director determines that the replacement vessel has a harvesting capacity that is comparable to the original permitted vessel. Vessel length, range, hold capacity, gear limitations, and other factors shall be considered in making determinations of the comparability of vessels' harvesting capacity.

(5) If a new owner of a permitted vessel wishes to have a permit issued in the new owner's name, the new owner must apply to the Pacific Area Office within 30 days of the effective date of this paragraph, or within 30 days of the change in ownership of a permitted vessel, as documented on a Coast Guard Certificate of Documentation or on state vessel registration records for an undocumented vessel, whichever is later. The new owner must at that time provide documentation of any changes in ownership of the vessel. The transferred permit is not valid until this process is completed.

(f) *Partnership or Corporate Ownership and Transfer.*

In addition to the other requirements of this section, the following provisions apply to a limited entry permit owned by or transferred to a partnership or corporation. (1) An application for a limited entry permit filed by a partnership or corporation must identify each owner's respective percentage share of the partnership(s) or corporation(s).

(2) A change of 50 percent or more of the ownership of a partnership or corporation will be considered a transfer. Layerings of partnerships or corporations will not insulate a permit holder from application of this limitation.

(3) If a limited entry permit is transferred to a partnership or corporation, the transferee(s) must provide satisfactory documentation of the transfer, including the name of each new owner and respective ownership share for each owner of the corporation or partnership obtaining the permit. The transferred permit is not valid until this process is completed.

5. New § 685.18 is added to subpart A and reserved, to read as follows:

~~§ 685.18 Vessel position fixing device.~~  
[Reserved]

6. A new § 685.17 is added to subpart A, to read as follows:

**§ 685.17 Availability of records for inspection.**

Any fish dealer shall provide an authorized officer access for inspecting and copying all records of fish purchases, sales, or other transactions involving fish taken or handled by vessels that have permits issued under this part or are otherwise subject to this part, including but not limited to information concerning:

(a) The name of the vessel involved in each transaction and the owner or operator of the vessel;

(b) The amount, number, and size of each species fish involved in each transaction; and

(c) Prices paid by the buyer and proceeds to the seller in each transaction.

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