

VII. FURTHER EVALUATION OF PROPOSED ACTIONS

VII.A. National Standards of the Magnuson Act

VII.A.1. Prevent Overfishing While Achieving Optimum Yield (OY)

The proposed limited entry program is expected to prevent overfishing while achieving OY from the fisheries in and around the Hawaii EEZ. Such managed fisheries should not measurably impact Pacific pelagic stocks since US landings account for only a small fraction of the total catch. However, if a detectable impact does occur (e.g., swordfish in the North Pacific), fishing effort and mortality may be adjusted through FMP provisions to prevent long-term adverse impacts. The number of permitted vessels will be no more than that issued under the moratorium (166). Longline effort will be capped by the limits on number of vessels and vessel upgrading. However, effort may expand above current (1993) levels. This may include a shift to larger vessels, but no vessel larger than the longest vessel active during the moratorium will be allowed to fish. Based on present vessel activity patterns, larger vessels would be expected to fish mostly beyond the EEZ. This change should not affect nearshore catch rates of troll and handline fisheries. Maintaining the local availability of pelagic stocks for troll and handline fisheries is a goal of the FMP. However, if adverse impacts are detected on any component of the fishery, the FMP provisions will allow for correction.

VII.A.2. Best Scientific Information Available

This amendment incorporates the best scientific information available. Simultaneous with implementation of the moratorium in 1991, the Council developed a 3-year plan to improve the scientific base of information to support long-term decisions for management of the longline fishery. Unfortunately, the initial set of pelagic fishery research projects did not begin until mid-1993 due to bureaucratic delays. Therefore, 1991 and 1992 data are from the federal longline logbook program, state catch and effort reports and federal/state market monitoring programs.

VII.A.3. Management as a Unit Throughout the Range

The FMP and this amendment acknowledge that the range for Pacific pelagic management unit species extends throughout the Pacific. At present, there are no international agreements for data collection and exchange, cooperative stock assessments, or for monitoring and management of Pacific pelagic fisheries. The Council has long promoted the development of such organizations and programs, which are necessary for stock-wide management. Consequently, the Council has consistently attempted to manage the US fisheries in the EEZ or surrounding waters, to prevent overfishing and achieve OY to the extent practicable.

VII.A.4. Do Not Discriminate Between Residents of Different States and Allocations

The FMP and this amendment do not discriminate between residents of different states of the USA. The limited entry program indirectly allocates fishing privileges in that only people holding permits will be permitted to fish for, possess, or land longline-caught fish in the EEZ. However, the program provides for market forces to carry out this allocation as permits are freely transferable, and holders can sell, lease or trade permits to suit individual circumstances. The initial allocation of permits will be to the current or most recent holders of permits who have made landings of longline-caught fish in Hawaii or who met certain exemption criteria. This was deemed the fairest way to make the transition from the moratorium to the new limited entry program.

VII.A.5. Promote Efficiency

By allowing market forces to determine who will ultimately obtain limited entry permits for the longline fishery, the new program fosters efficiency. However, capping the number of longline permits at 166 and placing a limit on upgrading of individual vessels is intended to manage growth and prevent adverse impacts on other established commercial fisheries, recreational fisheries, for pelagic species and protected species. Thus, the limited entry program does not have economic allocation as its sole purpose.

VII.A.6. Allow for Variations

The FMP and this amendment acknowledge the limitations of the available data and the lack of ability to predict fishermen's reactions to new regulations or the stocks' reactions to new fishing patterns and environmental variability. The proposed action includes framework procedures to allow timely response to new information that demonstrates a need for action to address biological, economic or social problems. This includes the possibility of reducing the level of effort or catch in the longline fishery due to stock declines or adverse impacts on related fisheries.

VII.A.7. Minimize Costs and Duplication

The FMP and this amendment should prevent overfishing and achieve OY in a cost-effective manner. The FMP and this amendment do not duplicate any other Federal regulations or state fishery management measures.

VII.B Limited Entry Considerations

The Magnuson Act provides that a system for limiting access to a fishery may be proposed by a Council, but the Council must take into consideration six specific factors in developing such a program, as follows:

VII.B.1. Present participation in the fishery

The Council is aware that, although 166 longline permits were issued under the limited entry moratorium eligibility criteria, about 22 permitted vessels had not fished by September 1993. Several factors may account for the level of inactivity. Subsequent establishment of area closures around the MHI precluded the activity of some small vessels. Some owners were unable to fish and were also unable to sell their vessels due to the limits on subsequent permit transfer. Other owners may have been active in other fisheries, either in the Hawaiian Islands or in other areas. Under the proposed limited entry program, permits will be initially issued to all moratorium permit holders who either landed fish in Hawaii at some time between 23 April 1991 and 22 April 1994, or met certain exemption criteria. Thus, all presently active participants will be eligible for new permits. It is estimated that most moratorium permit holders will either meet the landing requirement or qualify for an exemption.

VII.B.2. Historical practices in and dependence on the fishery

No one who was historically active in the fishery and is dependent on it will be denied eligibility for continued participation. If such individuals are unable to fish with their new permit, they may obtain a replacement vessel to resume fishing or lease or sell the permit to another party. The amendment does not affect those who have historically been in troll and handline fisheries. These fishermen may obtain permits through purchase, lease or other arrangements if they wish to enter the longline fishery.

VII.B.3. The economics of the fishery

The proposed measures provide for transferability of permits and allow limited vessel upgrades. The area closures imposed after the moratorium went into effect may have prevented a number of longline vessel owners from fishing with their permits. The proposed limited entry program will allow these persons to obtain new vessels to resume fishing. Alternatively, they may sell or lease their permits allowing new persons to fish. In any event, the new rules should allow permit holders to fish and run their businesses in a more economically prudent manner than allowed under the current moratorium.

VII.B.4. Capability of vessels to engage in other fisheries

The Council recognizes that limited entry has already been established for other fisheries in the Hawaii EEZ and other areas, and that alternatives for excluded longliners are few. This is a principal reason why the Council chose to provide an opportunity for all current permit holders to continue to hold permits under the replacement limited entry program. By allowing a mechanism for vessel upgrades, the amendment will allow permit holders adversely affected by area closures to obtain larger vessels and resume fishing safely beyond these closed areas.

VII.B.5. Cultural and social framework

The current rules have effectively precluded some historical participants of the longline fishery. The combination of area closures around the MHI and restrictions on permit transfers during the moratorium period most severely affected owners of small vessels are persons who historically fished closer to shore. By allowing upgrades and permit transfers, the Council is attempting to allow those historical participants an opportunity to shift to larger vessels or to sell or lease their permits so they can find other ventures.

VII.B.6. Other relevant considerations

The Council considered the possibilities of more or less than 166 permits. It concluded that more permits may increase the risk of overfishing and of adverse impacts on other fisheries to unacceptable levels. The USA may be disadvantaging its fleet relative to competing nations' fisheries on the high seas by not allowing a larger fleet or not exempting from limited entry vessel owners who agree to put VMS on their vessels while fishing solely outside the EEZ. However, this decision was deemed appropriate given the uncertainty about the status of swordfish stocks and the concern that if stocks outside the EEZ collapse, there would be pressure to allow such vessels to fish in the EEZ. Alternatively, if only people who were active in the fishery in 1992 (for example) had been deemed eligible for new permits, then the Council would have unfairly restricted the opportunity for people disadvantaged by the area closures and permit transfer limitations to fish economically.

The Council also considered allowing unrestricted permit transfers and vessel upgrades, as well as maintaining the highly restrictive permit transfer and vessel upgrade rules of the moratorium. The proposed course of action limits increases in overall potential capacity but intends to allow those who have been disadvantaged to have some basis for either investing in larger vessels or selling or leasing their permits so they can recapture some of the costs of their original investment.

VII.C Achievement of FMP Objectives and OY

The definition of OY was amended in 1991 to reflect management goals within the EEZ around each island and throughout the range of the stocks. The proposed definition, incorporating the clarifications described earlier (V.D.3), is as follows:

OY is the amount of each management unit species, or species complex, that can be harvested by domestic and foreign fishing vessels in the EEZ and adjacent waters, to the extent regulated by the Fishery Management Plan, without causing "local overfishing" or "economic overfishing" within the EEZ of each island area, and without causing or significantly contributing to "growth overfishing" or (worse) recruitment overfishing on a stock-wide basis.

The FMP, as amended, and its implementing regulations are designed to meet several overall objectives:

1. To manage fisheries for management unit species in the Western Pacific Region to achieve optimum yield.
2. To promote, within the limits of managing at OY, domestic harvest of the management unit species in the western Pacific EEZ and domestic fishery values associated with these species. For example, by enhancing the opportunities for:
 - a. satisfying recreational fishing experience,
 - b. continuation of traditional fishing practices for non-market personal consumption and cultural benefits, and
 - c. domestic commercial fishermen, including charterboat operations, to engage in profitable fishing operations
3. To diminish gear conflicts in the EEZ, particularly in areas of concentrated domestic fishing.
4. To improve the statistical data base by conducting improved stock assessment and fishery evaluations, thus supporting fishery management and resource conservation in the EEZ and throughout the range of the management unit species.
5. To promote the formation of a regional or international arrangement for assessing and conserving the management unit species and tunas throughout their range.
6. To preclude waste of pelagic management unit species associated with longline, purse seine, pole-and-line or other fishing methods.
7. To promote, within the limits of managing at OY, domestic marketing of the management unit species in American Samoa, Guam and Hawaii and the Northern Marianas Islands.

This amendment is consistent with the objectives of the FMP and is intended to achieve the OY from the pelagics fisheries.

VIII. RELATIONSHIP TO OTHER LAWS AND DIRECTIVES

VIII.A. Executive Order 12866

The proposed amendment is not considered a major action according to the definition of Executive Order 12866, i.e., the proposed action will not have an effect on the economy of more than \$100 million. Nevertheless, section VI.C meets the impact assessment requirement of this executive order.

VIII.B. Regulatory Flexibility Act (RFA)

The RFA requires a determination as to whether a proposed rule has a significant impact on a substantial number of small entities. If the rule does have this impact, then an Initial Regulatory Flexibility Analysis (IRFA) has to be completed for public comment. The IRFA becomes final after the public comments have been addressed. If the proposed rule does not meet the criteria for "substantial number" and "significant impact", then a certification to this effect must be prepared.

For the purposes of the IRFA, the firms directly involved in the pelagics fisheries and potentially affected by the proposed action are owners of commercial longline fishing vessels (166, directly affected), commercial troll and handline fishing vessels (about 1500 vessels, including vessels used part-time, indirectly affected), commercial charter vessels (about 250, indirectly affected), and recreational fishing vessels (known number, but probably in the range of 3,000-6,000 indirectly affected); owners of seafood brokerage and wholesaling firms (100-200, indirectly affected); and owners of suppliers to commercial and recreational fisheries (unknown number, perhaps 10-20, indirectly affected). All of these firms are classified as small entities and all may be affected to some degree.

Therefore, for this proposed action, the "substantial number" criterion is met.

The determination relative to the "significant impact" test can be triggered by several conditions, one of which is a change in annual gross revenues of more than 5%. The proposed action is expected to result in up to an 34% increase in the gross revenue (assuming all permits would be active) to the longline fleet, with little or no impact on other fishery sectors. The amount of fish local brokers and dealers would handle will probably increase by 5-20% since much of the longline catch is directly air freighted from Hawaii to the US mainland. In any event the test for significance is met by this determination. Therefore, an RFA is required and the required information follows:

Explanation of Why the Action is Being Considered: The proposed action is being considered due to concern about the likely adverse effects of uncontrolled expansion of the longline fishery if no action is taken and the current moratorium lapses. It is generally agreed that some limitation on growth of the longline fishery should be maintained. Uncontrolled expansion of the longline fishery could result in overfishing

of some pelagic species (notably swordfish), and in adverse impacts on other commercial and recreational fisheries for pelagic species. The proposed action may result in expansion of the longline fishery to a level higher than has been active under the moratorium now in place but not to as high a level as would be expected without this action. Data collection under the FMP will continue and the effects of the expanded fishery will be evaluated periodically to determine if the effort needs to be reduced, or if further expansion of the fleet could be permitted to achieve OY.

Objectives and Legal Basis for the Action: The proposed action is taken under the authority of the Magnuson Fishery Conservation and Management Act, which established U.S fisheries management jurisdiction in the Exclusive Economic Zone (EEZ). The Act also established the Western Pacific Fishery Management Council and charged it with developing fishery management plans for fisheries in the western Pacific region. The Pelagics Fishery Management Plan, which the proposed action would amend, was approved by the Secretary of Commerce and implemented by Federal regulations in 1987. The objectives of the FMP are specified in Section VII.C of this amendment. The purpose of the proposed action is to ensure that the objectives of the FMP will be met by preventing overfishing of the stocks and maintaining healthy commercial and recreational fisheries through controls on expansion of the relatively new longline fishery.

Identification of Alternatives: The Council considered several alternatives to the proposed action. These are described and evaluated in the amendment.

Demographic Analysis: A demographic analysis was not conducted, although some data from the State of Hawaii Data Book and other sources were used in comparing the effects of the proposed action and alternatives.

Cost Analysis: The analyses in the amendment address costs and benefits of the proposed action and alternatives. It has been determined that the proposed alternative is cost-effective.

Competitive Effects Analysis: The industry is composed entirely of small businesses (harvesters, processors, brokers/dealers, suppliers) and is expected to remain so. Since no large businesses are involved, there are no disproportional small-versus-large business effects.

Reporting, Recordkeeping, and Compliance Requirements: These measures are designed to obtain information necessary to evaluate impacts of the proposed action on various sectors and associated industries of the fishery and to determine whether the objectives of the action are being achieved.

Identification of Overlapping Regulations: The rule would apply to longline vessels fishing in and around the Hawaii EEZ and landing their catch in Hawaii. There is only one set of regulations applicable to these fishing vessels dealing with pelagic species.

VIII.F Marine Mammal Protection Act (MMPA)

The proposed action is consistent with the requirements of the MMPA. The Hawaii longline fishery is classified as a Category III fishery under the MMPA. Fishermen are not required to obtain Marine Mammal Exemption Certificates, but are required to report all interactions with marine mammals. The logbooks required under the pelagic longline fishery regulations include provisions for reporting interactions with marine mammals and thus facilitate compliance with the MMPA.

No special measures to prevent interactions with marine mammals are proposed in this amendment. Interactions are very rare and do not pose a management problem. The area closures imposed under Amendment 3 to the FMP to prevent taking of Hawaiian monk seals will remain in effect. In September, the Council requested that the Southwest Regional Director require observers to collect information on protected species interactions, as allowed through framework procedures in Amendment 3. Observers would provide data to confirm whether interactions occur more frequently than reported to date. If new information indicated that management action related to the protected species zone was needed, such actions would be possible through the framework procedures proposed in Amendment 7.

VIII.G Federalism (Executive Order 12612)

The proposed action will not have federalism implications sufficient to warrant preparation of a Federalism Assessment.

VIII.H National Environmental Protection Act (NEPA)

This amendment has been prepared to serve as a combined FMP amendment and final environmental impact statement (FEIS). As such, the format is somewhat different from the format of a stand-alone FEIS. This approach is taken to reduce the volume of paper required, and to reduce the potential for misunderstanding by ensuring that all reviewers have the same document. A listing of the sections in which information required for a FEIS follows the FEIS cover sheet.

Efforts have been made to ensure that there are no overlapping regulations. Additional information may be found in section VI.D.1.

VIII.C. Paperwork Reduction Act

The proposed action will result in minor modifications of the approved information collection for the federal fisheries permit program. Overall, the information collection burden should be reduced as less documentation will be necessary for recording the issuance and transfers of permits. A request for approval of the modifications is incorporated in a request for renewal of the currently approved of the Southwest Region Permit Family of Forms (OMB No. 0648-0204).

VIII.D Coastal Zone Management Act

The proposed action will probably result in changes in fishing patterns by fishing vessels based in Hawaii. The approved coastal zone management plan of the State of Hawaii has been reviewed and the relationship of the proposed action to the plan has been evaluated. The NMFS has determined that the proposed action will be carried out in a manner that is consistent with that plan. This determination has been forwarded to the coastal zone management agency of Hawaii for concurrence.

VIII.E Endangered Species Act (ESA)

The proposed action is consistent with the Endangered Species Act. The Hawaii longline fishery takes several species of protected turtles, but the level and significance of the takes is not known. As a result of a reinitiation of consultation under Section 7 of the ESA, NMFS issued on 10 June 1993 a Biological Opinion and Incidental Take Statement concerning the take of sea turtles in the longline fishery. While the data on incidental take and mortality are weak, the potential take is of considerable concern. The opinion contains conservation recommendations for developing management policies and regulations through the Pelagics FMP which would help in reducing adverse impacts to listed species in the central North Pacific Ocean. The incidental take statement in the opinion authorizes taking of turtles in the longline fishery, but includes "reasonable and prudent measures" for NMFS to carry out, including establishment of a mandatory observer program. The conservation recommendations are not legally binding, but the reasonable and prudent measures are. These recommendations and measures were presented to, and considered by, the Council, and are evaluated with comments on the proposed action as presented in the FEIS. In the Council's view, the limited entry program, with observers and reporting of catch and effort, should provide a sound basis for determining the extent to which the longline fishery is impacting sea turtles as well as pelagic stocks and other fisheries.

IX. REVIEW OF COMMENTS AND RESPONSES TO COMMENTS

The Council and NMFS received many letters and petitions dealing with the management problems and the proposed and alternate actions being considered. A summary of these comments and responses to them follows.

IX.A Individuals' Comments on the Proposed Management Action and Alternatives

IX.A.1. Need for Limited Entry

Only one person indicated that there is no basis for limiting entry. This commenter indicated there are no clear biological problems, that the evidence does not indicate that the longline fishery is adversely affecting other fisheries, and that there is no limitation on international longline fisheries.

Response: The Council notes that evidence is not yet conclusive regarding whether there are or will be biological concerns with respect to fish stocks, but there is clear concern about the impacts of the fishery on sea turtles. The evidence is not yet conclusive regarding fishery interactions; more study is needed. The Council notes that the lack of international coordination may be a problem for future discussion.

IX.A.2. Supporting the Original Preferred Alternative

Letters and statements at hearings in support of the preferred alternative were received from 15 persons. In addition, petitions with more than 100 signatures were submitted in support of the preferred alternative. Among the points made were that:

- the ability to transfer permits is essential for business
- upgrading is critical to allow longline fishermen to fish with safe vessels on extended trips, especially with the main Hawaiian Island area closures in place
- the cap on number of vessels will minimize the risk of adverse effects on stocks and other fishery sectors
- transferable permits are crucial to allow new entry by persons who are now crew

Response: The Council notes that the proposed action differs from the preferred alternative principally in that there will be a limit on upgrading of vessels. The Council felt that allowing unlimited vessel upgrades might increase the risk of adverse impacts on turtles or fish stocks, so an upper limit on vessel length was proposed. However, permits will be freely transferable, and individual vessel owners will be able to make decisions whether or not to upgrade their vessels within the limits of the proposed upgrading rules. Thus permit holders will have more freedom than at present to use

their vessels and other financial resources in the manner that best suits their individual circumstances.

IX.A.3 Proposals for a More Restrictive Limited Entry Program

The Council received 14 sets of comments recommending that the original preferred alternative be made more restrictive:

- there is inadequate social impact evaluation
- the program does not consider the impact on native Hawaiians
- there is not sufficient evaluation and consideration of the value of recreational fishing
- the Council should be conservative and reduce the risk of adverse results of being wrong
- unlimited upgrades could result in collapse of the swordfish stock and ultimate fishery conflicts with other fishery sectors fishing closer to the islands for tuna
- the moratorium should be maintained until more information is available to demonstrate the effects of the longline fishery
- only those who fished in the moratorium should be eligible for new permits

Response: The proposed action is more conservative than the original preferred alternative. The limit on vessel upgrades should lessen the risk of adverse effects of being wrong about the expected impacts of a larger active longline fleet. While the number of vessels in the fishery will remain capped at no more than allowed during the moratorium, there may be more permits actively fished. Although the overall effort level is expected to increase somewhat compared to current levels, there may be a shift to swordfish fishing. The Council notes the importance of recreational fishing but has little information for determining the value of this fishery sector and does not expect it to be adversely affected by the longline fishery. Participation in the moratorium will be a criterion for permit eligibility, except that persons with small vessels and persons who qualify for longline limited entry by virtue of qualifying for lobster limited entry do not have to meet the landing requirement. This may result in some increase in effort as most current permit holders will make at least one trip to ensure future permit eligibility.

IX.B. Government Agencies' Comments

I.X.B.1. Hawaii Department of Business, Economic Development and Tourism

The Hawaii Department of Business, Economic Development and Tourism and the Hawaii State Senate Majority leader supported the preferred alternative. They indicated it would promote stability in the longline fishery. Transferability of permits

would make local businesses more viable and facilitate competitiveness with other world longline fisheries. Unlimited upgrades would also allow permit holders to obtain vessels and gear so they could best compete with other nations' longline fleets. There is no apparent risk to fish stocks.

Response: The Council chose to establish a limit on vessel upgrades. However, individual business owners will be able to decide whether to upgrade subject to the limits imposed. Whether the total harvest and value will be affected in the long run cannot be determined at this time but the fishery will be closely monitored and framework procedures can be used to adjust effort and/or catch upwards or downwards when more information becomes available.

IX.B.2 Office of Hawaiian Affairs and Department of Hawaiian Home Lands

The Office of Hawaiian Affairs and Department of Hawaiian Home Lands indicated concern that the program could adversely affect non-traditional and traditional native Hawaiian fishing practices. It was recommended that the program should provide special provisions for native Hawaiians, for example, reserving a limited number of permits for native Hawaiian fishermen.

Response: The Council is sensitive to the concerns of native Hawaiians and has worked for years to document and consider the needs of native Hawaiians in terms of fisheries under the Council's area of jurisdiction. The Council is unaware of any native Hawaiian fishing practices that will be affected in any way by the proposed action. The Magnuson Act does not provide a basis for special accommodations for native Hawaiians based on ethnic origin, therefore, no permits are reserved exclusively for native Hawaiians. However, permits will be transferable, and native Hawaiians will be able to enter the fishery if they choose to invest the necessary funds and other resources.

IX.B.3. US Department of State

The US Department of State recommended that the preferred alternative be modified to allow non-permitted U.S. longline vessels to enter Hawaii to reprovision. This would simply afford to U.S. vessels the same opportunity provided to foreign vessels.

Response: The proposed action now includes this measure. However, non-permitted longline vessels will not be permitted to offload any catch and may be required to stow or seal their gear while in the EEZ.

IX.B.4. US Coast Guard

The U.S. Coast Guard noted that, other things being equal, a larger vessel provides a greater margin of safety than smaller vessel. The Coast Guard did not, however,

propose that limitations on upgrading be removed on the basis of safety concerns.

Response: The proposed action will allow vessel owners to decide whether to upgrade their vessels for safety or other reasons.

IX.C. Comments on the DEIS and Responses

Several parties commented specifically from the perspective of review of the draft environmental impact statement in which the preferred alternative was presented and evaluated.

IX.C.1. Center for Marine Conservation

Comment: "The document glosses over the estimated take (and kill) of endangered and threatened sea turtles by simply noting the Council consulted with the NMFS, who issued a Biological Opinion with an Incidental Take Statement, including non-binding Conservation Recommendations."

Response: The Council had not had an opportunity to review and consider the Biological Opinion at the time the DEIS was being completed. The Council did discuss the Opinion at its meeting September 15-16, 1993, in the context of making final decisions on Amendment 7. Section III.G. of the final amendment document provides more detail on the Opinion and Incidental Take Statement. The Opinion is included as an Appendix to the final amendment/FEIS. Although the conservation recommendations and reasonable and prudent measures were directed at NMFS and not the Council, the Council took several actions to support the Opinion, including establishment of observer placement authority for the Southwest Regional Director, concurrence with immediate implementation of a vessel monitoring system, and limiting participation and vessel upgrades under a new limited entry program. This should prevent significant increases in potential fishing effort.

Comment: "There is no further analysis of the impact this increase (in effort) will have on sea turtle populations."

Response: Section VI.F. discusses the anticipated take of turtles under the proposed action.

Comment: "We also find NMFS' Biological Opinion lacking on this point, for the Incidental Take Level for the term of the Consultation (through December 31, 1993) allows for 752 takes with 299 mortalities. This take level is entirely excessive."

Response: NMFS concluded that the incidental take by the longline fishery in the 12 months covered by the Opinion could be 752 turtles, and that this take would not likely jeopardize the continued existence of the species.

Comment: "Without inclusion or summary of the Biological Opinion, the Terms and Conditions for implementing the Reasonable and Prudent Measures, and the proposed observer program, the DEIS document is inadequate for the purposes of public review and comment on the issue of endangered turtles."

Response: As indicated, the Opinion was not available to the Council prior to its decisions on the preferred alternative as described and evaluated in the draft amendment/DEIS. The final amendment/FEIS includes more information on the Opinion and actions taken to conform to the Opinion and Incidental Take Statement. The Opinion has been added as an appendix to the final amendment/FEIS.

Comment: "Furthermore, it appears that NMFS calculated the Incidental Take Levels for the Biological Opinion by simply looking at the estimated take from previous years and authorizing a similar take level in future years, or in this case, doubling the mortalities allowed to ensure no hindrances upon fishing activity for the current season. We find this methodology wholly inappropriate and believe it evades the spirit if not the letter of the Endangered Species Act. Because of the excessive incidental take authorized under the Biological Opinion, we request that the DEIS be revised to consider additional measures that can be imposed to reduce turtle mortalities."

Response: To determine the allowable take, NMFS first estimated the level of take that would be expected in the fishery by multiplying the estimated level of effort expected times the incidental take rate expected. NMFS then concluded that this level of take would not likely jeopardize the continued existence of the species if the take occurred in the next 12 months. NMFS then considered whether specific management measures could be applied to result in less turtle take in that period. NMFS did not recommend or require any such measures. Thus, the estimated level of take that resulted in the "no jeopardy" conclusion becomes the allowable take in the Incidental Take Statement. To the extent new information is available when consultations are reinitiated in June 1994, there could be a change in the allowable take in the future.

IX.C.2. U.S. Environmental Protection Agency

Comment: "Based on our overall review, we have assigned the DEIS a rating of LO (Lack of Objections)."

Response: None required.

"EPA commends the Council for its efforts to utilize ecosystem management techniques to protect commercial fish species. We do suggest that future EISs include all relevant studies such as the NMFS Biological Opinion so that other

agencies and the public have an opportunity to review and comment on all germane information before the decision is made."

Response: The Biological Opinion has been added as an appendix to the final amendment/FEIS, and section III.G. provides a summary of the conclusions of the Opinion.

IX.C.3. Marine Mammal Commission

Comment: "The results of the Section 7 consultations are not discussed in the DEIS and do not appear to be fully consistent with the proposed actions."

Response: The Biological Opinion was not available to the Council for consideration in the development of the draft amendment/DEIS, but is included as an appendix to the final amendment/FEIS and is summarized in section III.G. The conservation recommendations and reasonable and prudent measures were all directed at NMFS and not at the Council. As indicated in the response to the Center for Marine Conservation, the Council took several actions that are consistent with the Opinion and Incidental Take Statement.

Comment: "In particular, the preferred alternative relative to limiting fishing effort would permit increases in harvesting capacity that, as noted on page VI-44, would increase interaction rates with protected species, including sea turtles. This is directly contrary to the recommendation in the 10 June Biological Opinion that longline fishing be managed in a way 'that will not . . . result in increased sea turtle mortality.'"

Response: On 14 December 1993, the Council decided to propose a limited entry system with a limit on upgrading of vessels in the longline fleet. In addition, the Council agreed to immediate implementation of vessel monitoring system requirement and observer placement authority in September 1993. These actions are consistent with the Opinion.

Comment: "The MMC recommends that the DEIS be expanded to: (a) reflect the results of the Service's 10 June 1993 Biological Opinion and incidental take statement; (b) evaluate whether and what additional plan amendments may be needed to implement recommended actions contained in the Opinion and statement; and (c) where proposed actions are inconsistent with the recommended actions, provide the rationale for not adopting them."

Response: The Opinion is included as an appendix to the final amendment/FEIS and is summarized in III.G. The vessel upgrading limitation in the limited entry program, together with the vessel monitoring system requirement and observer authority, is consistent with the Opinion.

Comment: "In addition, the MMC recommends that the WPFMC's preferred alternative for limiting fishing effort be rejected in favor of the alternative described in section V.B.2 to extend limited entry regulations in their current form."

Response: The Council did not choose the original preferred option but chose a limited entry program with limits on vessel upgrading.

Comment: "The MMC recommends that the mandatory observer measures contained in the Draft Amendment be included in the proposal and implemented at the earliest possible date."

Response: The Council agreed in September 1993 to immediate implementation of observer placement authority for the Southwest Regional Director, and NMFS is promulgating regulations to implement a mandatory observer program as quickly as practicable.