

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 611 and 685**

[Docket No. 60964-7028]

Foreign Fishing: 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 the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). The FMP will (1) Establish a triggering mechanism to institute new area closures for foreign longline vessels in the exclusive economic zone (EEZ) if they are found by the Regional Director, Southwest Region, to be warranted; (2) eliminate existing quotas on foreign longline catch in the EEZ; (3) require catch data and reporting of fishery interaction with protected species in the EEZ; (4) prohibit the use of drift gill nets in the EEZ; (5) establish a process to obtain data on the incidental catch of pelagic fishes in the EEZ by tuna pole-and-line and purse seine vessels, and with respect to the domestic fishery for pelagic fishes, the FMP will prohibit the use of drift gill nets in the EEZ except where authorized by an experimental fishing permit. The intended effect of the final rule is to maintain the abundance of pelagic resources within the EEZ to support commercial and recreational fisheries.

EFFECTIVE DATE: March 23, 1987.

ADDRESSES: Copies of the FMP are available by writing to Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1608, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates (Administrator, Western Pacific Program Office, Southwest Region, NMFS, Honolulu, Hawaii), 808/955-8831; or Svein Fougner (Chief, Fisheries Management and Analysis Branch, Southwest Region, NMFS, Terminal Island, California), 213/514-6660.

SUPPLEMENTARY INFORMATION:**Background**

The FMP was prepared by the Western Pacific Fishery Management Council (Council) under the authorization of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. (Magnuson Act). Proposed regulations were published in the Federal Register on September 18, 1986 (51 FR 32808) and comments were invited until October 24, 1986. The FMP was scheduled to be approved on November 13, 1986; however, in view of the comments received on the size of the proposed area closures, the Council on November 9, 1986, voted unanimously to amend the FMP to limit the size of the areas closed to foreign longline vessels until certain criteria are satisfied. The FMP was resubmitted and an amended proposed rule was published in the Federal Register on December 17, 1986 (51 FR 45141). The public comment period ended on January 23, 1987.

Comments and Responses

When the FMP was resubmitted and a new proposed rule published in the Federal Register on December 17, 1986, responses to the comments that had been received by that date were discussed in the publication. The subjects covered were drift gill netting, need for the FMP, area closures, reporting requirements, observer requirements and recordkeeping. These comments and responses are not repeated here.

The only comments received since the December 1986 publication were from the Japan Tuna Association (JTA). The JTA repeated its argument against the area closures, reporting requirements and the need for the FMP, all of which have been discussed.

The JTA also commented on the proposed triggering mechanism that will change non-retention zones to some type of area closure, based upon the adverse effects of foreign fishing. The basic criticism is of the factors considered when estimating the effect of foreign longlining in the EEZ. The factors are viewed by the JTA as very general, requiring no quantification to convert non-retention zones to closed areas.

The factors that are to be considered by the Regional Director are general because they are designed to cover all situations that may arise; however, they do not eliminate any requirements of the Magnuson Act or circumvent the national standards. Quantification of the effects of foreign fishing is required before action can be taken. A decision to implement a specific closed area cannot be arbitrary and

unsubstantiated. In addition, determinations are required to be published in the Federal Register as a proposed action, and the information upon which the action is based will be available for public inspection.

Changes From Proposed Regulations of December 17, 1986

in § 611.81(j), Table 1 and Table 2 were confusing and have been revised. The new tables show clearly the closed areas, the non-retention zones, and the retention zones that will be in effect.

Classification

The Administrator of NOAA determined that this FMP is necessary for the conservation and management of the pelagic resources of the western Pacific region and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for this FMP and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA may be obtained at the above address.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A summary of his determination appears in the proposed rule.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small businesses. A summary of this determination appears in the proposed rule.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). The collection of the information has been approved by the Office of Management and Budget, OMB Control Number 0648-0097. Other reporting requirements contained in the rulemaking are approved under OMB Control Numbers 0648-0075 and -0089.

The Council has determined, and the appropriate State and territorial government offices have found, that the measures established in the FMP are consistent to the maximum extent practicable with the approved coastal zone management programs of Hawaii and the territories of American Samoa and Guam. Since the FMP was resubmitted for public review, the state of Hawaii and the territories of American Samoa and Guam will be asked to confirm their consistency determination.

The Council requested a consultation and biological opinion on the FMP under section 7 of the Endangered Species Act (ESA). The National Marine Fisheries Service (NMFS) issued a biological opinion on September 17, 1985, which concluded that the FMP is not likely to jeopardize any threatened or endangered species within the FMP's geographical scope. The biological opinion recommended that the FMP provide authority for NMFS to require the submission of reports on fishery interactions with protected species. Reporting requirements to this effect are contained in the final rule.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 20, 1987.

James E. Douglas, Jr.

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Chapter VI of 50 CFR is amended as follows:

PART 611—[AMENDED]

1. The authority citation for 50 CFR Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 18 U.S.C. 1361 *et seq.*

2. Section 611.81 is revised to read as follows:

§ 611.81 Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery.

(a) *Purpose.* (1) This section regulates all foreign fishing conducted under a Governing International Fishery Agreement which involves the catching of any species of billfish, oceanic shark, wahoo, or mahimahi (dolphin) in the exclusive economic zone (EEZ) of the United States in the Pacific Ocean, excluding the portion of the EEZ seaward of Alaska.

(b) *Definitions.* For the purposes of this section, these terms have the following meanings:

Billfish means broadbill swordfish (*Xiphias gladius*), blue marlin (*Makaira nigricans*), black marlin (*Makaira indica*), striped marlin (*Tetrapturus audax*), sailfish (*Istiophorus platypterus*), and shortbill spearfish (*Tetrapturus angustirostris*).

Closed area means that area of the EEZ in which foreign longline vessels

subject to this section are prohibited from fishing.

Drift gill net means a floating rectangular net with one or more layers of mesh which is set vertically in the water.

Exclusive economic zone means the zone established by Presidential Proclamation 5030, dated March 10, 1983 and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Mahimahi means "dolphin fish" (*Coryphaena hippurus* and *Coryphaena equisetis*).

Non-retention zone means that area of the EEZ in which all billfish, oceanic sharks, wahoo, mahimahi, and other fish caught by foreign longline vessels in the course of fishing under this section must be returned to the sea in accordance with the requirements of paragraph (k)(5) of this section.

Oceanic sharks means sharks of the families Carcharhinidae, Alopiidae, Sphyrnidae, and Lamnidae.

Regional Director means the Director of the Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, telephone number: 213-514-6196; or a designee.

Retention zone means that area of the EEZ in which foreign longline vessels subject to this section may retain billfish, oceanic sharks, wahoo, and mahimahi to the extent that retention is authorized by this section.

Wahoo means fish of the species *Acanthocybium solanderi*.

(c) *Permits.* All foreign longline vessels which intend to fish must have a permit issued under § 611.3.

(d) *Vessel and gear identification.* All permitted vessels subject to this section must comply with the vessel and gear identification requirements of § 611.5.

(e) *Observers.* Permitted vessels subject to this section must comply with the observer requirements of § 611.8.

(f) *Prohibited species.* The owner or operator of each foreign vessel must minimize its catch or receipt of prohibited species and must report the vessel's activities as prescribed in § 611.11 of the Foreign Fishing Regulations.

(g) *Vessel reporting.* The operator of each foreign fishing vessel must report the vessel's activities as prescribed in § 611.4 and in the formats specified in Appendix B to Subpart A of the Foreign Fishing Regulations.

(h) *Collection and reporting of data.* Permitted vessels subject to this section must comply with the recordkeeping requirements of § 611.9, in addition to the following.

(1) The daily fishing log contents found at § 611.9(e) must contain the following additional information:

- (i) The number of each species caught and retained;
- (ii) The number of each species caught and released;
- (iii) The number of each species released alive; and
- (iv) The number of hooks set by type of bait.

(2) Daily fishing logs must be mailed to the Regional Director not later than 30 days following the completion of fishing or must be hand delivered to the NMFS observer aboard the vessel upon his request.

(3) *Report of marine mammal and sea turtle incidental catch.* Each foreign nation whose permitted vessels fish under this section must submit, through the designated representative, a report of marine mammal and sea turtle incidental catch in the manner prescribed by § 611.4(f)(4) within 60 days of leaving the EEZ in lieu of weekly reports. (Permits issued under this section do not authorize the take and retention of marine mammals and sea turtles in the EEZ).

(4) *Reporting of incidental catch by non-permitted tuna harvesting vessels.* [Reserved].

(i) *Management area groups.* For the purposes of this section, the EEZ of the Pacific Ocean (excluding the EEZ seaward of Alaska) is divided into two management area groups as follows:

(1) *FMP management area group.* The areas of the EEZ off the coasts of the Hawaiian and Midway Islands, Guam, American Samoa, and U.S. possessions are governed by the provisions of the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) and are designated the FMP Management Area Group.

(2) *PMP management area group.* The areas of the EEZ off the U.S. west coast and the coasts of the Commonwealth of the Northern Mariana Islands are governed by the provisions of the Preliminary Fishery Management Plan for Billfish, Oceanic Sharks, Wahoo, and Mahimahi (PMP) in the Pacific Ocean and are designated the PMP Management Area Group.

(j) *Authorized fishery—FMP Management Area Group—*(1) *General* Foreign vessels subject to this section are authorized to fish in the EEZ of the Hawaiian and Midway Islands, Guam,

American Samoa, and the U.S. possessions subject to the requirements of this section.

(2) *Zones.* The FMP Management Area Group comprises the following closed-areas, non-retention zones and retention

zones (each of which is measured from the baseline used to measure the U.S. territorial sea) described in Table 1:

TABLE 1

Management area	Closed area	Non-retention zone	Retention zone
Hawaiian Islands	Within 12 nautical miles of all islands in the Hawaiian Islands chain.	(1) Between 12 and 100 miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Nihoa, and Oahu of the State of Hawaii. (2) Between 12 and 50 nautical miles from the remaining islands of the State of Hawaii.	(1) Beyond 100 nautical miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Nihoa, and Oahu of the State of Hawaii. (2) Beyond 50 nautical miles from the remaining islands of the State of Hawaii.
Guam	Within 12 nautical miles of Guam.	Between 12 and 50 nautical miles from Guam.	Beyond 50 nautical miles from Guam.
American Samoa	(1) Within a rectangle around the Tutuila and Manua islands of American Samoa bounded by 14° and 15° S. latitude and 168° to 171° W. longitude; and (2) Within a one degree (1°) square surrounding Swain's Island bounded by 10°33' to 11°33' S. latitude and 170°34' to 171°34' W. longitude.	None	(1) Areas of the EEZ outside the rectangle bounded by 14° to 15° S. latitude to 170° W. longitude; and 168° to 171° W. longitude; and (2) Areas of the EEZ outside the one-degree (1°) square surrounding Swain's Island.
U.S. possessions	Within 12 nautical miles of shore.	None	Beyond 12 nautical miles from shore.

(3) *Effort plans.* Foreign longline vessels which desire to fish in the FMP Management Area Group are required to file effort plans two (2) months prior to entering the retention zones of the EEZ for fishing purposes. Effort plans must indicate the dates when fishing is expected to begin and cease and must specify the areas of the EEZ where the vessels intend to operate. Effort plans must be submitted to the Administrator, Western Pacific Program Office, MNFS, 2570 Dole Street, Honolulu, HI 96822, telephone number: 808-955-8831.

(4) *Catch and effort.* There will be no limit on the amount of fishing effort or the catch of billfish, oceanic sharks, mahimahi, and wahoo made by foreign longline vessels in the retention zones described in Table 1 of paragraph (j) of this section.

TABLE 2

Management area	Maximum closed areas
Hawaiian Islands	(1) Within 150 nautical miles of the Main Hawaiian Islands (islands east of 161° W. longitude); and (2) Within 100 nautical miles of the Northwestern Hawaiian Islands including Midway (islands west of 161° W. longitude).
Guam	Within 150 nautical miles of Guam.
American Samoa	(1) Within a rectangle around the Tutuila and Manua islands of American Samoa bounded by 14° to 15° S. latitude and 168° to 171° W. longitude; and (2) Within a one-degree (1°) square surrounding Swain's Island bounded by 10°33' to 11°33' S. latitude and 170°34' to 171°35' W. longitude.
U.S. possessions	Within 12 nautical miles of shore.

¹ The northern boundary of the EEZ off the coast of Guam extends to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands.

(5) *Determinations.* The Regional Director will determine by the following criteria within 30 days after a request by the Council, whether the non-retention

zones presented in Table 1 of this section should be converted to closed areas or expanded up to the maximum closed areas presented in Table 2 of this section. All or portions of the area closures will be implemented as appropriate when the Regional Director has determined that foreign fishing has resulted in or is likely to result in—

(i) Adverse impacts on the catch, effort, gear, or economic performance of domestic vessels fishing in the area(s) for management unit species;

(ii) Excessive waste of management unit species in the affected area(s) of the EEZ;

(iii) Excessive costs to monitor foreign fishing and enforce the provisions of the EMP if the area(s) remains open; or

(iv) Adverse effects on one or more management unit species.

(6) *Factors considered.* Factors that will be considered by the Regional Director in making any determination described in paragraph 5 of this section will include the following:

(i) The current and projected level of domestic fishing and associated catch and landed value of catch in the affected area(s) in the absence of foreign fishing;

(ii) The importance of the area(s) to domestic vessels in terms of catch, effort, catch rates, and landed value of the catch of management unit species;

(iii) The level of foreign fishing likely to occur if the area(s) were to remain open to foreign fishing;

(iv) The likelihood of gear conflicts or waste of management unit species if foreign fishing were to be permitted; and

(v) Such other factors as the Regional Director determines to be important in making the determination as to area closures.

(7) *Notice of determination.* (i) The Secretary will publish a notice of any proposed determination described in

paragraph (j)(5) of this section in the Federal Register for public comment, unless the Secretary finds good cause that such notice and public review are impracticable or contrary to the public interest. During the public comment period, the aggregate data upon which the proposed determination is based will be available for public inspection at the Regional Office during business hours.

(ii) If the Secretary determines, for good cause, that a determination described in paragraph (j)(5) of this section must be issued without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice. During any such 15-day period, the aggregate data upon which the notice was based will be available for public inspection in the office of the Regional Director during business hours.

(iii) Any notice issued under this section will not be effective until 30 days after the publication in the Federal Register, unless the Secretary finds and publishes with the notice good cause for an earlier effective date.

(iv) Notices issued under this section will remain in effect until the expiration date stated in the published notice or until rescinded, modified, or superseded.

(v) Nothing contained in this section limits the authority of the Secretary to issue emergency regulations under section 305(e) of the Magnuson Act.

(8) *Drift gill nets.* The use of drift gill nets in the FMP Management Area Group is prohibited.

(k) *Authorized fishery—PMP Management Area Group.*—(1) *General.* Foreign longline vessels subject to this section are authorized to fish in the EEZ of the Northern Mariana Islands and the U.S. west coast beyond 12 miles from the baseline used to measure the U.S.

territorial sea, subject to the requirements of this section. Only foreign longline vessels are eligible for permits to fish in the PMP Management Area Group.

(2) *Zones.* The PMP Management Area

Group comprises the following closed areas, non-retention and retention zones (each of which is measured from the baseline used to measure the U.S. territorial sea) described in Table 3:

TABLE 3

Management area	Non-retention zone	Retention zone
West Coast	Between 12 and 100 nautical miles offshore.	Beyond 100 nautical miles.
Northern Mariana Islands, ¹ Rota, Tinian, Aguijan, and Saipan.	Between 12 and 50 nautical miles from Tinian, Aguijan, Rota, and Saipan.	Beyond 50 nautical miles of Rota, Tinian, Aguijan, and Saipan. Beyond 12 nautical miles of the remaining islands of the Northern Mariana Islands.

Closed areas: Foreign longline vessels subject to paragraph (j) of this section are prohibited from fishing within 12 nautical miles of the U.S. west coast and the Northern Mariana Islands.

¹ The southern boundary of the EEZ off the coast of the Northern Mariana Islands extends to those points which are equidistant between Guam and the island of Rota.

(3) *Total allowable level of foreign fishing (TALFF), joint venture processing (JVP), national allocations, and reserves.*

(i) *TALFF, reserve, and JVP amounts.* The TALFFs, amounts of fish held in reserve, and amounts of JVP are published in the Federal Register. Current TALFFs, reserves, and JVPs are also available from the Regional Director.

(ii) *TALFF and national allocations.* (A) The total amount of each species of billfish, oceanic sharks, wahoo, and mahimahi which may be caught and retained in each area of the PMP Management Area Group by foreign vessels subject to paragraph (k) of this section is limited to the TALFF for each applicable area and to the amount of the applicable national allocation.

(B) No foreign vessels subject to paragraph (k) of this section may catch and retain billfish, oceanic sharks, wahoo, and mahimahi within the non-retention zones set out in the table at paragraph (k)(2) of this section.

(iii) *Determination.* (A) As soon as practicable after September 1 of each year, and upon receipt of a written request from a foreign nation, the Regional Director, Southwest Region, will determine, for each species for which a reserve has been established, the amount of fish which has been harvested to date by U.S. vessels in each applicable area.

(B) If the Regional Director determines that the amount of fish of a species harvested by vessels of the United States in an area is less than 80 percent of the expected domestic harvest for that species in that area, the Regional Director will apportion to TALFF the entire amount of the reserve for the applicable species in the applicable area. No reserve amounts will be

apportioned to TALFF if domestic vessels have harvested 80 percent or more of the expected domestic harvest for that species in the applicable area by the date of this determination.

(iv) *Notice.* The Assistant Administrator for Fisheries, NOAA, will publish in the Federal Register a notice of each determination made under paragraph (k)(3)(iii) of this section.

(4) Cancellation of authority to retain. (i) The authority of a foreign longline vessel to retain an applicable species is canceled:

(A) When the national allocation for the applicable species is reached; or

(B) At the date and time specified in the notification issued by the Assistant Administrator under paragraph (k)(4)(ii) of this section.

(ii) The Assistant Administrator will determine, on the basis of the information specified in § 611.13, when the TALFF or optimum yield (OY) of a billfish species, oceanic sharks, wahoo, or mahimahi in an area of the PMP Management Area Group will be reached. At least forty-eight hours before the applicable TALFF or OY will be reached, the Assistant Administrator will notify both the affected foreign nation(s) and the designated representative for any affected fishing vessel that authority to retain the applicable species is canceled.

(iii) Any cancellation under paragraph (k)(4) of this section will remain in effect until a new or increased allocation becomes available.

(iv) The closure provisions of § 611.13 do not apply to foreign longline vessels fishing subject to paragraph (k) of this section.

(5) Prohibited species.

(i) *General.* The following are prohibited species under paragraph (k) of this section.

(A) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no national allocation;

(B) All billfish, oceanic sharks, wahoo, and mahimahi caught in excess of an applicable OY, TALFF, or national allocation; and

(C) All billfish, oceanic sharks, wahoo, and mahimahi caught in a non-retention zone. (See Table 3 at paragraph (k)(2) of this section.)

(ii) *Treatment.* All prohibited species will be treated in accordance with § 611.11.

(iii) *Additional requirements for billfish and oceanic sharks.* Unless otherwise specifically instructed by a U.S. observer or authorized officer, all prohibited billfish and oceanic sharks must be released by cutting the line (or by other appropriate means) without removing the fish from the water.

(iv) *Rebuttal of presumption.* Foreign vessels fishing subject to paragraph (k) of this section may rebut the presumption of § 611.11(d) by:

(A) Storing all prohibited species caught outside the EEZ in a separate part of the vessel's hold which can be sealed, and arranging inspection and sealing of the vessel's hold by U.S. authorities before commencing fishing in the EEZ or in non-retention zones; or

(B) Other reasonable means which may be authorized by the Regional Director if, in consultation with the U.S. Coast Guard, the Regional Director determines that special circumstances warrant alternative arrangements.

(v) *Procedures for hold sealing.*

(A) Inspection and sealing of a foreign vessel's hold may be arranged by contacting the Southwest Region Office, National Marine Fisheries Service, 2570 Dole Street, Honolulu, HI 96822, telephone number: 808-955-8831, at least 48 hours in advance of the date for which inspection is requested.

(B) Ports at which such inspections may be made are Honolulu and Kahului, Hawaii; Agana, Guam; and San Diego, California.

(C) Additional ports for hold inspections may be arranged with the Regional Director.

(vi) *Other requirements.* The designation of ports for hold inspection and sealing does not modify any port entry arrangements or requirements (if any) of Governing International Fishery Agreements or the notification requirements of any other laws or regulations of the United States.

1. A new Part 685 is added to Chapter VI to read as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

Subpart A—General Provisions

- 685.1 Purpose and scope.
- 685.2 Definitions.
- 685.3 Relation to State laws.
- 685.4 Reporting requirements.
- 685.5 Prohibitions.
- 685.6 Facilitation of enforcement.
- 685.7 Penalties.
- 685.8 Experimental fishing permits (EFPs).

Subpart B—Management Measures

- 685.21 Prohibition on drift gill netting.
- 685.22 Annual report.
- 685.23 Five-year review.

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

Subpart A—General Provisions

§ 685.1 Purpose and scope.

(a) The regulations in this part govern fishing for billfish and associated species by fishing vessels of the United States in the exclusive economic zone (EEZ) off the coasts of Hawaii, American Samoa, Guam, and the U.S. possessions.

(b) Regulations governing fishing for billfish and associated species by fishing vessels other than vessels of the United States are published at 50 CFR Part 611.

(c) These regulations implement the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) developed by the Western Pacific Regional Fishery Management Council (Council) under the Magnuson-Fishery Conservation and Management Act (Magnuson Act).

§ 685.2 Definitions.

In addition to the definitions in the Magnuson Act, the terms used in this part have the following meanings (some definitions in the Magnuson Act have been repeated here to aid understanding of the regulations):

Administrator means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), or a designee.

Associated species refers to the following species managed by the FMP:

(a) *Mahimahi* means "dolphin fish" (*Coryphaena hippurus* and *Coryphaena equisetis*);

(b) *Oceanic sharks* means sharks of the families Carcharhinidae, Alopiidae, Sphyrnidae, and Lamnidae; and

(c) *Wahoo* means fish of the species *Acanthocybium solanderi*.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard.

(b) Any special agent of the National Marine Fisheries Service.

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Billfish means broadbill swordfish (*Xiphias gladius*), blue marlin (*Makaira nigricans*), black marlin (*Makaira indica*), striped marlin (*Tetrapturus audax*), sailfish (*Istiphorus platypterus*), and shortbill spearfish (*Tetrapturus angustirostris*).

Drift gill net means a floating rectangular net with one or more layers of mesh which is set vertically in the water.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 19, 1983 and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery management area means the fishery conservation zone off the coasts of Hawaii, American Samoa, Guam, and U.S. possessions in the western Pacific. The outer boundary of the fishery management area north of Guam extends to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands. This definition does not include the EEZ off the coasts of the Commonwealth of the Northern Mariana Islands.

Fishing means

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described above.

(e) This term does not include any scientific research activity which is conducted by a scientific research vessel.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any

activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Land or landing means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended.

Maximum sustainable yield (MSY) means an average over a reasonable length of time of the largest catch which can be taken continuously from a stock.

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or by the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means

(a) Any person who owns that vessel in whole or in part;

(b) Any chartered of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local or foreign government or any entity of any such government.

Regional Director means the Southwest Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, or a designee.

Secretary means the Secretary of Commerce or a designee.

State means the State of Hawaii, the Territory of American Samoa, and the Territory of Guam.

Vessel of the United States means

(a) Any vessel documented under chapter 121 of title 46, United States Code;

(b) Any vessel numbered under chapter 123 of title 46, United States Code, and measuring less than 5 net tons;

(c) Any vessel numbered under chapter 123 of title 46, United States

Code, and used exclusively for pleasure; and

(d) Any vessel not equipped with propulsion machinery of any kind and not used exclusively for pleasure.

§ 685.3 Relation to State laws.

This part recognizes that any State law which pertains to vessels registered under the laws of that State while in the fishery management area, and which is consistent with the FMP including any State landing law, will continue in effect with respect to fishing activities regulated under this part.

§ 685.4 Reporting requirements.

This part recognizes that catch and effort data necessary for implementing the FMP are collected by the State of Hawaii, American Samoa, and Guam under existing State data collection programs. No additional Federal reports are required of fishermen or processors as long as the data collection and reporting systems operated by the State agencies continue to provide the Secretary with statistical information adequate for management.

§ 685.5 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Possess, have custody or control of, ship or transport, offer for sale, sell, purchase, import or export any billfish or associated species taken, retained, or landed in violation of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

(2) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

(3) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (a)(2) of this section;

(4) Resist a lawful arrest for any act prohibited by this part;

(5) Interfere with, delay, or prevent by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(6) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Magnuson Act;

(7) Transfer, or attempt to transfer, directly or indirectly, any U.S.-harvested billfish or associated species to any foreign fishing vessel within the EEZ,

unless the foreign vessel has been issued a permit which authorizes the receipt of U.S.-harvested fish of the species being transferred;

(8) Fail to comply immediately with enforcement and boarding procedures specified in § 685.6;

(9) Fish for billfish or associated species in violation of any terms or conditions attached to an experimental fishing permit (EFP) issued under § 685.8; or

(10) Fish for billfish or associated species using gear prohibited under § 685.21 or not permitted by an EFP issued under § 685.8.

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any other regulation or permit promulgated under the Magnuson Act.

§ 685.6 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by a flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement until and who is unable to obtain clarification by loudhailer or

radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop, must

(1) Guard Channel 16, VHF-FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (. — . —)¹ is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY-CY" (— . — . — . — . — . —) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (. . . — . — . . . —) means "You should stop or heave to; I am going to board you."

(4) "L" (— .) means "You should stop your vessel instantly."

§ 685.7 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions prescribed

¹Period (.) means a short flash of light and dash (—) means a long flash of light.

in the Magnuson Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

§ 685.8 Experimental fishing permits (EFPs).

(a) *General.* The Secretary may authorize, for limited experimental purposes, the direct or incidental harvest of billfish or associated species managed by the FMP which would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Secretary in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Application.* An applicant for an EFP must submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:

- (1) The date of the application;
- (2) The applicant's name, mailing address, and telephone number;
- (3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;
- (4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;
- (5) For each vessel to be covered by the EFP:

- (i) Vessel name;
- (ii) Name, address, and telephone number of owner and master;
- (iii) U.S. Coast Guard documentation, State license, or registration number;
- (iv) Home port;
- (v) Length of vessel;
- (vi) Net tonnage; and
- (vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amounts of such harvest necessary to conduct the experiment;

(7) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used; and

(8) The signature of the applicant.

(c) The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(d) *Issuance.* (1) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the Federal Register with a brief description of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Western Pacific Fishery Management Council, the U.S. Coast Guard, and the fishery management agency of the affected State, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested.

(ii) A citation of the regulation or regulations which, without the EFP, would prohibit the proposed activity; and

(iii) Biological information relevant to the proposal.

(2) At a Western Pacific Fishery Management Council meeting following receipt of a complete application, the Secretary will consult with the Council and the Director of the affected State fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (d)(2) of this section, or as soon as practicable thereafter, the Secretary will notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application;

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way;

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose;

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP;

(v) The applicant has failed to demonstrate a valid justification for the permit; or

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision of the Secretary to grant or deny an EFP is final and unappealable. If the permit is granted, the Secretary will publish a notice in the Federal Register describing the experimental fishing to be conducted under the EFP. The Secretary may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

(i) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP;

(iii) The times and places where experimental fishing may be conducted;

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP;

(v) The condition that observers be carried aboard vessels operating under an EFP;

(vi) Data reporting requirements; and

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FMP.

(e) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than one year unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(f) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(g) *Transfer.* EFPs issued under this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(h) *Inspection.* Any EFP issued under this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of Subpart B of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, is grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR Part 904 Subpart D. Other sanctions available under the statute will be applicable.

(j) *Protected Species.* Vessels fishing under an FMP are required to report any incidental take or fisheries interaction with protected species on a form provided for that purpose. Reports must be submitted to the Regional Director within 3 days of arriving in port.

Subpart B—Management Measures

§ 685.21 Prohibition on drift gill netting.

Fishing with drift gill nets in the fishery management area is prohibited, except where authorized by an

experimental fishing permit issued under § 685.8 of this part.

§ 685.22 Annual report.

By June 30 of each year, a plan monitoring team appointed by the Council will prepare an annual report on the domestic and foreign fisheries for billfish and associated species in the management area.

§ 685.23 Five-year review.

Within five years of the effective date of this FMP, the Council, in cooperation

with the NMFS and State and Territorial agencies, will conduct a full review of the FMP. The review will assess the effectiveness of the FMP in meeting with the Council's objectives and the need for changes in any management measures, including adjustments in area closure to foreign longline fishing and adding data collection or reporting requirements for the domestic fisheries which take billfish and associated species.

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