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Note to reader: This proposed rule is one of several proposed rules that are being published to implement the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996. We propose to establish a new 45 CFR subchapter C, Parts 160 through 164. Part 160 will consist of general provisions, Part 162 will consist of the various Administrative Simplification regulations relating to transactions and identifiers, and Part 164 will consist of the regulations implementing the security and privacy requirements of the legislation. Proposed Part 160, consisting of two subparts (Subpart A—General Provisions, and Subpart B—Preemption of State Law) will be exactly the same in each rule, unless we add new sections or definitions to incorporate additional general information in the later rules.

Dated: December 10, 1999.

Donna Shalala,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 99120-332-9332-01; I.D. 110499B]

RIN 0648-AM79

Atlantic Highly Migratory Species; Pelagic Longline Management

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to prohibit pelagic longline fishing at certain times and in certain areas within the Exclusive Economic Zone of the Atlantic Ocean off the coast of the Southeastern United States and in the Gulf of Mexico. This proposed rule is necessary to address pelagic longline bycatch and incidental catch of overfished and protected species. The intent of the proposed action is to reduce that bycatch and incidental catch by pelagic longline fishermen who target highly migratory species (HMS). **DATES:** Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 p.m., eastern standard time, on February 11, 2000. Public hearings on this proposed rule will be held in January and February, 2000. Times for the public hearings will be specified in a separate document in the **Federal Register** to be published at a later date.

ADDRESSES: Written comments on the proposed rule should be submitted to Rebecca Lent, Chief, HMS Division (SF/1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301-713-1917. Comments will not be accepted if submitted via e-mail or Internet. For copies of the draft Technical Memorandum and Supplemental Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DSEIS/RIR/IRFA), contact Jill Stevenson at 301-713-2347 or write to Rebecca Lent. **FOR FURTHER INFORMATION CONTACT:** Jill Stevenson at 301-713-2347, fax 301-713-1917, e-mail

jill.stevenson@noaa.gov; or Buck Sutter at 727-570-5447, fax 727-570-5364, e-mail buck.sutter@noaa.gov.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries

are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635. The Atlantic pelagic longline fishery is also subject to the requirements of the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries because of documented interactions with sea turtles, marine mammals, and sea birds.

Pelagic Longline Fishery

Pelagic longline gear is the dominant commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target highly migratory species. The gear consists of a mainline, often many miles in length, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target preferentially yellowfin tuna, bigeye tuna, or swordfish.

Observer data and vessel logbooks indicate that pelagic longline fishing for Atlantic swordfish and tunas results in catch of non-target finfish species (including bluefin tuna, billfish, and undersized swordfish) and protected species, including endangered sea turtles. Also, this fishing gear incidentally hooks marine mammals and sea birds during tuna and swordfish operations. The bycatch of animals that are hooked but not retained due to economic or regulatory factors contributes to overall fishing mortality. Such bycatch mortality may significantly impair rebuilding of overfished finfish stocks or the recovery of protected species.

Bycatch Reduction Strategy

Atlantic blue marlin, white marlin, sailfish, bluefin tuna, and swordfish are considered overfished. In the HMS FMP and Amendment 1 to the Atlantic Billfish FMP (Billfish Amendment), NMFS adopted a strategy for rebuilding these stocks through international cooperation at the International Commission for the Conservation of Atlantic Tunas (ICCAT). This strategy primarily involves reducing fishing mortality through the negotiation of country-specific catch quotas according to rebuilding schedules. However, the

contribution of bycatch to total fishing mortality must be considered in the HMS fisheries, and in fact, ICCAT catch quotas for some species require that countries account for dead discards. The swordfish rebuilding plan that was adopted by ICCAT at its 1999 meeting provides added incentive for the United States to reduce swordfish discards. Additionally, Magnuson-Stevens Act national standard 9 for fishery management plans requires U.S. action to minimize bycatch and bycatch mortality to the extent practicable.

In the draft HMS FMP and proposed regulations (64 FR 3154, January 20, 1999), NMFS proposed a time-area closure during July-September in the Florida Straits to reduce the bycatch of undersized swordfish by pelagic longline fishermen. The Florida Straits area was proposed for closure primarily due to high discard rates of undersized swordfish, though some reductions in billfish mortality were also anticipated. The proposed Florida Straits closure was rejected in the Final HMS FMP because NMFS concurred with public comments that indicated that the area proposed was too small to be effective at reducing bycatch and incidental catch of all species of concern and because NMFS agreed that a more comprehensive assessment of the bycatch problem was warranted. Commercial and recreational fishermen and representatives of environmental groups expressed concerns that fishing effort would be displaced into adjacent ocean areas where bycatch rates of certain species were likely to be similar to, or higher than, those rates in the proposed closed area. NMFS agreed that further analysis of the effects of reallocation of effort was needed.

NMFS indicated in the final HMS FMP and Billfish Amendment that a more comprehensive approach to time-area closures would be undertaken after further analysis of the data and consultation with the HMS and Billfish Advisory Panels (APs). NMFS held a combined meeting of the HMS and Billfish APs on June 10–11, 1999, to discuss possible alternatives for a proposed rule under the framework provisions of the HMS FMP. At the AP meeting, presentations were provided by members of the APs, or their representatives, and by the HMS Division on various time-area strategies.

The AP members were generally supportive of the time-area management strategy, and asked NMFS at the conclusion of the meeting to develop a written document outlining all analytical methods and results of the time-area evaluation. The APs also provided several comments on temporal

and/or spatial components that NMFS should consider further in its analyses. The AP's comments and suggestions were included in the development of a draft Technical Memorandum, which was made available to the public on November 2, 1999 (64 FR 59162).

Legal Challenge to FMPs

After issuance of the final regulations to implement the HMS FMP and Billfish FMP Amendment, the National Coalition for Marine Conservation and several other groups filed suit in U.S. District Court for the District of Columbia challenging the bycatch and rebuilding provisions. Plaintiffs asked the Court to enter a declaratory judgment that NMFS violated the Magnuson-Stevens Act and the APA and to "order the defendants, as expeditiously as possible and by a date certain, (1) to evaluate adequately the practicability of conservation and management measures that could minimize highly migratory species bycatch; (2) to require practicable conservation and management measures that minimize highly migratory species bycatch; (3) to establish an adequate bycatch reporting methodology; and (4) to set forth conservation and management measures to rebuild the blue and white marlin fisheries." In a negotiated stay of the proceedings of the suit, NMFS committed to publishing a proposed rule on or by December 15, 1999, to address bycatch of billfish and undersized swordfish.

Marine Mammal Protection Act (MMPA)

Under procedures established by the MMPA, the Atlantic pelagic longline fishery has been listed as a Category I fishery due to the frequency of incidental mortality and serious injury to marine mammals (predominantly pilot whales which are considered a strategic stock). Based on 1991 through 1995 observer data (the most recent data considered for this listing), pelagic longline gear hooked 14 different species of marine mammals.

In 1994, the MMPA was reauthorized, establishing the Take Reduction Team framework. The Atlantic Offshore Cetacean Take Reduction Team (AOCTRT) was formed in May 1996 to address protected species bycatch by the Category I Atlantic pelagic fisheries (i.e., driftnet, longline, and pair trawl fisheries that target highly migratory species). Observer data collected since 1991 considered by the AOCTRT indicate that marine mammal interaction rates are high in the pelagic longline fishery and that effort has expanded since 1985.

The take reduction plan was submitted to NMFS in November, 1996. In accordance with section 118(f) of the MMPA, that plan contained measures to address the bycatch of strategic stocks of marine mammals. The consensus plan recommended a broad range of regulatory and non-regulatory bycatch reduction measures, including, but not limited to, gear modifications, time-area closures and educational workshops. NMFS implemented some of these proposed measures in the HMS FMP (e.g., limiting the length of pelagic longlines in the Mid-Atlantic Bight, requiring vessels to move after an interaction with a protected species). In the final HMS FMP, NMFS noted that additional reductions in takes of marine mammals could occur with closures of certain fishing areas during times of high interaction rates.

Endangered Species Act (ESA)

Loggerhead sea turtles are considered threatened under the ESA, and leatherback and Kemp's Ridley sea turtles are considered endangered. The Atlantic pelagic longline fishery interacts with all of these species. On April 23, 1999, NMFS concluded that the pelagic longline fishery may adversely affect, but is not likely to jeopardize the continued existence of any endangered or threatened species under NMFS jurisdiction. On the approximately 5 percent of trips with at-sea observers from 1993 through 1997, a total of 470 sea turtles was observed caught by pelagic longline fishermen. Although most turtles were released alive, NMFS remains concerned about serious injuries of turtles hooked on pelagic longline gear.

NMFS has responded to requirements under the ESA by implementing the terms and conditions of the Biological Opinion and Incidental Take Statement for the pelagic longline fishery. NMFS selects a target of 5 percent of pelagic longline trips for observer coverage, records information on the condition of sea turtles and marine mammals when released on observed trips, and supports research on turtle capture rates as they relate to hook types. NMFS continues to hold educational workshops for pelagic longline fishermen and has distributed turtle and marine mammal handling instructions in an attempt to increase the survival of protected species through education on proper release techniques.

To the extent that turtle interactions occur at higher rates in certain fishing areas at particular times, time-area closures for pelagic longline fishing could increase or reduce turtle takes. NMFS, therefore, considered the

potential impacts of alternative closed areas on the expected rates of turtle interactions. In addition, NMFS considered gear/fishing modifications that might further reduce turtles takes.

Bycatch Reduction Alternatives

NMFS considered three alternative actions to reduce bycatch and/or bycatch mortality in the Atlantic HMS pelagic longline fishery: status quo, gear modifications that would decrease hook-ups and/or increase survival of bycatch species, and prohibiting longline fishing in areas of high bycatch or incidental catch rates. NMFS considered gear modifications beyond those examined during development of the HMS FMP. NMFS also considered a broad range of closures, both in terms of area and time.

NMFS rejected the status quo because NMFS is required to minimize bycatch and bycatch mortality under the Magnuson-Stevens Act to the extent practicable. And, although NMFS, under the Endangered Species Act and the Marine Mammal Protection Act, has been working with fishermen to decrease interactions with endangered sea turtles and strategic stocks of marine mammals and to increase chances of survival for these animals when released from longline gear, NMFS has determined that further action to reduce bycatch mortality is needed. While this proposed rule is not intended to directly address bycatch mortality of protected species, NMFS has carefully analyzed the alternatives to ensure that the impacts on protected species would be minimized.

Gear Modifications

NMFS considered various gear modifications, including the restriction on the use of live bait, modifications to hook spacing on the mainline, a requirement to use circle hooks, and limitations on soak time or timing/ placement of gear. Although experience with these gear modifications indicates possible reductions in bycatch and/or bycatch mortality, data are insufficient to conclude that gear modifications alone would adequately meet the objective of reduced mortality for all of the species of concern. Given the increased fishing costs and enforcement issues associated with some of these alternatives, NMFS has rejected gear modifications at this time and prefers to assess the effectiveness of time-area closures while continuing to conduct and support gear research.

Effort Reduction

NMFS rejected the banning all pelagic longline fishing by U.S. vessels because

of the significant adverse economic impact on fishermen, support services and seafood dealers, and increased costs to consumers. Additionally, a ban on longlining might preclude full harvest of the U.S. swordfish quota, and as such, would be inconsistent with legal requirements that do not allow for regulations that have the effect of decreasing an ICCAT quota or that do not provide fishermen with a reasonable opportunity to harvest an ICCAT quota. NMFS prefers instead to restrict pelagic longline fishing in areas where bycatch and incidental catch rates are the highest and thus still allow for pelagic longlining in other areas.

However, even with these proposed time-area closures to reduce bycatch rates, NMFS may need to consider future reductions of pelagic longline effort to meet bycatch reduction and stock rebuilding goals for all affected species. While reductions in the pelagic longline fleet have been achieved with the limited access program implemented by the HMS FMP, further reductions could be achieved through attrition of current limited access permits, landings criteria for renewal of permits, or a vessel buy back program. NMFS has not included any of these measures in this rulemaking. However, NMFS is aware of three legislative proposals recently introduced in the 106th Congress (S1911, H.R. 3331, and H.R. 3390) to reduce bycatch and overall effort in the longline fleet. Specifically, each of these bills appears to provide conservation benefits to highly migratory and other fish species, to reduce negative fishing interactions between the longline and recreational fishermen, and to reduce the number of longline fishing vessels through a buy back program. The agency finds these objectives laudable.

Evaluation of Closed Areas

NMFS considered a number of factors when examining time-area closures as a means of reducing bycatch. In assessing the effects of closures, NMFS established three objectives: (1) to maximize the reduction in the incidental catch of billfish and of swordfish less than 33 lb (15 kg) dressed weight; (2) to minimize the reduction in the target catch of swordfish and other marketable species; and (3) to ensure that the incidental catch of other species (e.g., bluefin tuna, mammals, turtles) either remains unchanged or is reduced. It was recognized that all three objectives might not be met to the maximum extent and that conflicting outcomes would require some balancing of the objectives.

NMFS analyzed a wide range of areas to evaluate the effect of closures on bycatch rates. After consultation with the AP, NMFS focused on combinations of Gulf of Mexico and South Atlantic Bight areas that would most closely meet the bycatch reduction objectives. The South Atlantic Bight was targeted because in recent years a high percentage of the swordfish hooked in that area were undersized and were discarded. The Gulf of Mexico area was investigated initially as an area of high marlin bycatch. Preliminary analyses were made available to the AP members and to the general public in the draft Technical Memorandum (see **ADDRESSES**).

Based on catch and bycatch data reported in vessel logbooks, NMFS constructed several potential closed areas of differing sizes both in the Gulf of Mexico and in the South Atlantic Bight. The delineation of the areas and a summary of reported catch and effort in each area are contained in the draft SEIS (see **ADDRESSES**) and are not repeated here. Assuming an area would be closed, NMFS first estimated the target catch and bycatch that would not occur during the time of the closure based on average catch rates reported in vessel logbooks over the period from 1995 to 1997. However, it is realistic to assume that the effort (longline sets) normally expended in the potential closed area would be redistributed elsewhere. Therefore, in analyzing the degree to which various time-area closures achieve the objectives, it was necessary to consider effort redistribution. The results of the analysis under the "no-redistribution" and "redistribution of effort" models are described at length in the draft Technical Memorandum and Draft SEIS (see **ADDRESSES**) and are not repeated here.

After analyzing the net effects on catch and bycatch, NMFS is proposing to close a mid-sized area in South Atlantic Bight (generally between 24°00' N. lat. and 34°00' N. lat. and within 76°00' W. long and 82°00' W. long.) during January through December and a mid-sized area in the Gulf of Mexico (north of 26°00' N. lat. and west of 90°00' W. long.) during March through September. The use of pelagic longline gear by U.S. commercial fishermen that target HMS (those vessels with HMS permits) would be eliminated in approximately 99,810 square miles of ocean by the South Atlantic closure and 96,560 square miles of ocean by the Gulf of Mexico closure. Under the assumption of no-effort redistribution, NMFS estimates reductions of incidental catch and bycatch as follows:

40 percent for swordfish discards; 22 percent for blue marlin discards; 20 percent for white marlin discards; 40 percent for sailfish discards; 60 percent for bluefin tuna discards; 4 percent for pelagic sharks discards; 46 percent for large coastal sharks discards; and 5 percent for sea turtles. Without shifting fishing effort that would otherwise be applied in the closed areas, landings of target and marketable incidental catch would be reduced, including: swordfish, 24 percent; bigeye, albacore, yellowfin, and skipjack (BAYS) tunas, 17 percent; dolphin, 59 percent, pelagic sharks, 12 percent; and large coastal sharks, 37 percent.

Under one assumption of redistribution of effort for the same closure, NMFS estimates that reductions in bycatch and incidental catches would be 22 percent for swordfish discards and 49 percent for bluefin tuna discards. Incidental landings of dolphin would be reduced by 34 percent under this closure alternative, and swordfish would be reduced by 6 percent, but landings would increase by 6 percent for pelagic sharks landings and 9 percent for BAYS tunas. The bycatch of sea turtles would also increase by almost 8 percent under the effort redistribution scenario. NMFS expects that at least some fishing effort would be shifted to open areas and, therefore, considers the redistribution model to be the more realistic outcome.

Although a reduction of 10 percent is estimated for sailfish, discards of other Atlantic billfish would increase if effort is redistributed at random from the closed area: 5 percent for blue marlin; 6 percent for white marlin. However, the random effort redistribution model does not account for the generally smaller size of vessels that currently fish off the southeast U.S. Atlantic coast and it is unlikely that these vessels would be redistributed into the open Caribbean or southwest Atlantic Ocean where blue marlin, white marlin, and sailfish discard rates generally increase. Therefore, the impact of effort redistribution on Atlantic billfish discards is probably overestimated. However, NMFS will continue to assess reduced or alternative closed areas that would more effectively decrease billfish discard rates overall and minimize displacement of vessels into areas where billfish discard rates are higher.

Effort redistributed to the Mid-Atlantic Bight area is likely to encounter more mammals and turtles than if those longline sets were made in the closed areas. Similarly, sets redistributed to the northeast areas might encounter more sea turtles than if the sets were made in the areas proposed for closure.

However, the projected increases in turtle takes under a random effort redistribution scenario result from vessels affected by the closures shifting trips to the Grand Banks, an area of high turtle takes. Movement of most of these vessels to the Grand Banks is an unlikely scenario due to the smaller size of the vessels with home ports in the proposed areas. These smaller vessels are not outfitted for distant water trips and would more likely shift effort to adjacent coastal areas where turtle takes are less frequent. In addition, it is not certain that the limited number of larger vessels could necessarily increase effort to a significant degree in the Grand Banks area as the fishing season is restricted in duration by weather and availability of swordfish.

In considering the impacts of area closures, it is recognized that larger closed areas in the Gulf and South Atlantic could cause effort to shift to areas with greater turtle takes (Grand Banks) and billfish bycatch (Caribbean Sea). Conversely, smaller closed areas would not shift as much fishing effort away from areas where bluefin tuna and undersized swordfish interactions are problems. On balance, NMFS is proposing a mid-size closed area to avoid the areas of highest interactions with some species of concern while still affording fishermen an opportunity to fish in areas that are closer to normal operations and that do not inordinately increase takes of other species of concern. NMFS requests comments specifically on how the boundaries and size of the closed areas could be modified to mitigate the impacts on turtles as well as billfish.

The time-area closures in this proposed rule differ from those in the bills before Congress referenced above. However, different closed areas could be considered as further analysis of current catch, bycatch and incidental catch rates helps to pinpoint problem areas or as the effects of gear modifications or potential vessel buyouts are determined to result in reduced interactions. For example, the NMFS proposal includes more of the "Charleston Bump" area in an attempt to address concerns that juvenile swordfish fish move in and out of that area associated with oceanographic conditions. Closure of an area encompassing at least part of the "Charleston Bump" would enhance bycatch reduction.

NMFS specifically requests public comment on whether the size and boundaries of the various closed areas will accomplish the bycatch reduction goals. Under the no-displacement model, NMFS estimates that the proposed time-area closure would result

in a decrease in gross exvessel revenues of up to \$14 million and approximately 20 percent of the vessel operators would lose half of their gross income.

Recognizing the significant economic impacts of this proposed rule, NMFS also seeks comments on how to mitigate those impacts, including the need for a vessel buyout program, as suggested in the legislative proposals.

Facilitation of Enforcement

In implementing the time-area closures, NMFS has concerns about the potential for expanded pelagic longline fishing effort despite having limited access to the shark, swordfish, and tuna fisheries, due to increased interest in targeting dolphin and wahoo with this gear. Dolphin and wahoo are under the management authority of the South Atlantic, Gulf of Mexico and Caribbean Fishery Management Councils. Based on logbook reports indicating a limited amount of directed effort (less than 10 percent of pelagic longline sets in 1988), targeted pelagic longline fishing for wahoo and dolphin in the proposed closed areas would result in similar bycatch rates of undersized swordfish, billfish, and sea turtles. Because these vessels targeting wahoo and dolphin might not have HMS permits, such pelagic longline effort could lead to increased regulatory discards of tunas and legal-sized swordfish.

NMFS, therefore, proposes that vessels issued HMS permits be allowed to retain HMS in the closed areas only if transiting the closed areas with an operating VMS, or if fishing in the closed areas with gear other than pelagic longlines. This would reduce the incentive for HMS-permitted vessels to target other species with pelagic longline gear if incidental catch of HMS cannot be retained. NMFS has requested that the Fishery Management Councils review this proposed rule and assess the implications of the directed pelagic longline fishery for dolphin and wahoo on the proposed bycatch reduction measures. The Councils may wish to consider complementary actions to enhance the bycatch reduction afforded by this proposed rule.

NMFS analyzed economic impacts to all swordfish limited-access permit holders (includes all tuna and swordfish fishermen using longline gear) who reported pelagic longline effort in 1997, regardless of their target species. NMFS requests comments on the economic impacts of these proposed measures on vessels that do not currently hold tuna or swordfish limited-access permits and that may otherwise have targeted dolphin and wahoo in the proposed closed areas.

Time-area closures provide NMFS with an effective tool to reduce bycatch while still allowing fishermen to pursue HMS in other areas or HMS and other species in these closed areas with other authorized fishing gears. Given the high costs to NMFS of 100-percent observer coverage, NMFS requires vessel monitoring systems (VMS) on all vessels that have pelagic longline gear on board as of June 1, 2000. VMS will be used to assist in enforcing closed areas. NMFS proposes that pelagic longline vessels be allowed to transit the proposed closed areas with HMS on board provided the VMS is operating consistent with existing regulations at 50 CFR 635.69.

In order to effectively enforce the closed areas for vessels issued swordfish and shark permits, NMFS must consider the impacts of pelagic longline fishing activities in all waters, regardless of whether conducted within or beyond the boundaries of the EEZ. In the consolidated regulations issued to implement the HMS FMP (64 FR 29090, May 28, 1999), NMFS established a condition of issuing a shark permit to a qualifying vessel such that persons aboard the vessel would be subject to Federal shark regulations regardless of where the fishing activity occurs. Similarly, NMFS now proposes that the same condition apply to the issuance of a swordfish permit. If this provision is implemented, the fishing, catch and gear requirements of this part with respect to swordfish would apply to person aboard permitted vessels within the EEZ, landward of the EEZ, or outside the EEZ. As swordfish limited access permits have already been issued without such condition, NMFS solicits comment from those permit holders on the need for, and consequences of, future attachment of this condition.

Conclusions

NMFS proposes to prohibit pelagic longline fishing in areas with relatively higher bycatch rates because this alternative would best address the conservation and management objectives described above. Should future research indicate that practicable gear modifications would reduce bycatch in a comparable manner, NMFS will consider those gear modifications in conjunction with, or as an alternative to, time-area closures. The preferred alternative appropriately meets the objectives of the Magnuson-Stevens Act and has the greatest likelihood of reducing bycatch while minimizing, to the extent possible, adverse impacts on fishing revenues and costs.

NMFS notes that there are similarities between the time-area closures for pelagic longline gear contained in this

proposed rule and those contained in legislation pending before Congress. There are also significant differences, however, particularly in the longer closed period for the Gulf of Mexico. NMFS recognizes that there may be a rational basis for modifying the time-area closures proposed in this rule in order to alleviate some biological, social, or economic impacts for which limited information was available at the time of developing this rule. Therefore, NMFS is specifically soliciting public comment and scientific information on such modifications.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.*

NMFS has concluded that this proposed rule to prohibit pelagic longline fishing in the closed areas would have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis has been prepared.

The initial regulatory flexibility analysis assumes that fishermen, during the time they would otherwise be pelagic longline fishing in the designated areas would instead: (1) make longline sets in other areas, (2) participate in other commercial fisheries, or (3) exit commercial fishing. As of October 28, 1999, there were 443 directed and incidental swordfish permit holders under the limited access system. This number probably represents the number of active pelagic longline vessels since most pelagic longline fishermen land swordfish along with other species. Under the preferred alternative, each of the above scenarios results in greater than a 5-percent decrease in gross revenues for more than 20 percent of the affected entities, or would cause greater than 2 percent of the affected entities to be forced to cease operations.

The other alternatives considered include the status quo, gear modifications, and a ban on pelagic longline fishing by U.S. vessels in the Atlantic Ocean. Although the status quo and gear modification alternatives might have lesser economic impacts on participants in the pelagic longline fishery, those alternatives either do not reduce bycatch to the extent that NMFS expects to be achieved by the time-area closures or present enforcement difficulties. While a complete ban on longline fishing would reduce bycatch to a greater extent than the proposed time-area closures, the lost value of commercial seafood products and the

adverse impacts on fishery participants and fishing communities would impose greater costs than the proposed action. The RIR/IRFA provides further discussion of the economic effects of all the alternatives considered.

The proposed action would not impose any additional reporting or recordkeeping requirements on vessel operators or dealers. Vessel logbooks, dealer reports, observer notification, and VMS requirements applicable to the HMS fisheries are all currently approved by the Office of Management and Budget under existing regulations.

NMFS reinitiated formal consultation for all Highly Migratory Species commercial fisheries on May 12, 1998, under section 7 of the ESA. In a Biological Opinion issued on April 23, 1999, NMFS concluded that operation of the Atlantic pelagic longline fishery may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS' jurisdiction. While this proposed rule, if implemented, would eliminate interactions between pelagic longline fishermen and endangered sea turtles in the closed areas, the overall effect on interaction rates will depend on fishermen's responses to the closures in terms of shifting pelagic longline effort or fishing for other species with other gear. NMFS is concerned that turtle takes could increase under certain scenarios of effort displacement and has reinitiated consultation under section 7 of the ESA.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: December 10, 1999.

Penelope D. Dalton,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 635, is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, the definition of "high-flyer" is revised and new definitions for "Gulf of Mexico closed area" and "Southeastern United States closed

area'' are added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Gulf of Mexico closed area means the Atlantic Ocean area shoreward of the outer boundary of the EEZ that is both north of 26°00' N. lat. and west of 90°00' W. long.

* * * * *

High-flyer means a flag, radar reflector or radio beacon transmitter, suitable for attachment to a longline to facilitate its location and retrieval.

* * * * *

Southeastern United States closed area means the Atlantic Ocean area seaward of the baseline from which the territorial sea is measured and shoreward of the outer boundary of the EEZ from a point intersecting the coast at 34°00' N. lat. near Wilmington Beach, North Carolina and proceeding due east to connect by straight lines the following coordinates in the order stated: 34°00' N. lat., 76°00' W. long.; 31°00' N. lat., 76°00' W. long.; 31°00' N. lat., 78°00' W. long.; 28°17' N. lat., 79°00' W. long.; then proceeding along the boundary of the EEZ to 24°00' N. lat., 81°50' W. long.; then proceeding due north to intersect the coast near Key West, Florida.

* * * * *

3. In § 635.4, paragraph (a)(10) is added, and paragraph(e)(4) is removed, to read as follows:

§ 635.4 Permits and fees.

* * * * *

(a) * * *

(10) *Permit condition.* An owner issued a swordfish or shark permit pursuant to this part must agree, as a condition of such permit, that the vessel's swordfish or shark fishing, catch and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, or outside the EEZ, and without regard to where such swordfish or shark, or gear are possessed, taken or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations on swordfish or shark fishing, persons aboard the vessel must abide by the state's more restrictive regulations.

4. In § 635.21, the first sentence of paragraph (c) is removed and paragraph(c)(2) is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) *Pelagic longlines.* * * *

(2) A pelagic longline may not be fished or deployed from a vessel issued

a permit under this part in the Northeastern United States closed area from June 1 through June 30 each calendar year, in the Gulf of Mexico closed area from March 1 through September 30 each calendar year, or in the Southeastern United States closed area at any time.

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5. In § 635.69 (which will be effective June 1, 2000), paragraph (a) is amended by adding a second and third sentence to read as follows:

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* *** A vessel is considered to have pelagic longline gear on board when a power-operated longline hauler, hi-flyers/floats, and gangions are on board. Removal of any one of these three elements constitutes removal of pelagic longline gear.

* * * * *

6. In § 635.71, paragraph (a)(30) is added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(30) Deploy or fish with a pelagic longline greater than the maximum length or in any closed area as specified at § 635.21(c)(1) or (2).

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