

testing rate on January 1, 1996. In 1998, the industry-wide violation rate for alcohol was .21 percent. Since the industry-wide violation rate for alcohol has remained below .5 percent for the last two years, FRA is lowering the minimum random alcohol testing rate to 10 percent of covered railroad employees for the period January 1, 2000 through December 31, 2000.

This notice sets the minimum random testing rates required next year. Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, D.C. on December 20, 1999.

**Jolene M. Molitoris,**

*Federal Railroad Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 991221344-9344-01; I.D. 121099A]

RIN 0648-AN44

#### Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Area Closure

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

**ACTION:** Emergency rule; notice of closure; request for comments.

**SUMMARY:** NMFS issues an emergency rule to prohibit vessels registered for use under a Hawaii longline limited access permit from fishing with longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long. NMFS is also prohibiting vessels registered for use with receiving vessel permits from receiving Pacific pelagic management unit species harvested with longline gear while those receiving vessels are in the closed area. No vessel may land or transship, shoreward of the outer boundary of the EEZ, pelagic fish harvested by longline gear in the closed area. The closure is an interim measure in response to the Order Setting Terms of Injunction issued by the U.S. District Court, District of Hawaii, dated November 23, 1999. The intended effect is to implement the court-ordered closure and reduce adverse impacts to sea turtles by curtailing activities of the Hawaiian longline fishery while an

environmental impact statement (EIS) is being prepared.

**DATES:** This rule is effective 12:01 a.m., local time, December 23, 1999, through 12:01 a.m., local time, June 26, 2000. Comments must be received no later than 5:00 p.m., local time, on February 10, 2000.

**ADDRESSES:** Written comments on this action must be mailed to Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700; or faxed to 808-973-2941. Comments will not be accepted if submitted via e-mail or internet. Copies of the environmental assessment prepared for this action may be obtained from Alvin Katekaru or Marilyn Luipold, PIAO.

**FOR FURTHER INFORMATION CONTACT:** Alvin Katekaru or Marilyn Luipold, 808-973-2937.

**SUPPLEMENTARY INFORMATION:** The Hawaii-based longline fishery is managed under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). The FMP was prepared by the Western Pacific Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 660.

On October 6, 1999, NMFS announced its intent to prepare an EIS on management of the fishery for pelagic species in waters of the exclusive economic zone (EEZ) in the Western Pacific Region. Additionally, NMFS announced its intention to prepare an environmental assessment (EA) for that fishery. The scope of the EA includes all activities related to the conduct of the fishery for the 2-year period NMFS anticipates is necessary to prepare the EIS. Both the EIS and the EA examine the impacts of pelagics harvest on, among other things, sea turtles and seabirds.

On November 23, 1999, the U.S. District Court, District of Hawaii, ordered NMFS to prohibit, within 30 days of the date of entry of the Order, "all activities of the Hawaii longline fishery authorized by the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, as amended, within the area encompassed and bounded by the following description: north of 28° N. and between 168° W. and 150° W." To comply with the Court Order, NMFS is implementing the Court-ordered closure by emergency action. This action closes an area to longline fishing that was the source of approximately 30 percent of

the revenue received from swordfish landings and approximately 13 percent of the total revenue from all species landed by the Hawaii-based longline fleet.

Accordingly, NMFS prohibits all vessels registered for use under a Hawaii longline limited access permit from fishing with longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long. NMFS also prohibits vessels registered for use with receiving vessel permits (issued under the regulations at 50 CFR 660.21(c)) from receiving Pacific pelagic management unit species harvested with longline gear while those receiving vessels are in the closed area. No vessel may land or transship, shoreward of the outer boundary of the EEZ, pelagic fish harvested by longline gear in the closed area.

The closure is being implemented by emergency action under the authority of section 305(c) of the Magnuson-Stevens Act. Under 305(c)(3), the emergency regulation may remain in effect for not more than 180 days after the date of publication, and may be extended for one additional period of not more than 180 days. The emergency regulation may also be terminated at an earlier date.

#### Criteria for Issuing an Emergency Rule

This emergency rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency situation results from recent, unforeseen events, or recently discovered circumstances. Also, it realizes immediate benefits from the emergency rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

#### *Recent, Unforeseen Events or Recently Discovered Circumstances*

The Court-ordered closure was issued November 23, 1999, and allows 30 days for implementation. Emergency action is necessary to comply with the Order and implement the closure by December 23, 1999. To be effective by then, an emergency rule is needed.

#### Immediate Benefits

This rule is not likely to have a significant effect on tuna harvests. Although there are many variables that may confound accurate predictions about the effects upon different sea turtle species, NMFS anticipates the closure will have a positive benefit on sea turtles in general.

**Classification**

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary to comply with a valid order of the U.S. District Court. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an EA for this rule that describes the impact on the human environment that would result from this rule and found that no significant impact would result. This emergency rule is of limited duration and is expected to result in a reduction of overall sea turtle interactions. Copies of the environmental assessment are available (see **ADDRESSES**).

The AA finds that this rule, which is being implemented under section 305(c) of the Magnuson-Stevens Act, must become effective on December 23, 1999, to comply with the Order issued by the U.S. District Court, District of Hawaii. The Order requires that NMFS implement a longline area closure within 30 days from the date of issuance of the Order (November 23, 1999). Under section 305(c) of the Magnuson-Stevens Act, this rule may remain in effect for not more than 180 days after the date this notification is published, and may be extended for one additional period of not more than 180 days. The AA finds good cause to waive the

requirement to provide prior notice and the opportunity for public comment, 5 U.S.C. 553(b)(B), as such procedures would be impracticable. Similarly, the need to implement the Court-ordered measure in a timely manner constitutes good cause under 5 U.S.C. 553(d)(3) to waive delayed effectiveness of the rule.

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

Because this rule is not required to be published with notice and opportunity for public comment under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act do not apply.

**List of Subjects in 50 CFR Part 660**

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

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

Dated: December 21, 1999.

**Andrew A. Rosenberg,**

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

**PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC**

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.22, new paragraphs (z) through (bb) are added to read as follows:

**§ 660.22 Prohibitions.**

\* \* \* \* \*

(z) Fish with a vessel registered for use under a Hawaii longline limited access permit using longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long.

(aa) Land or transship shoreward of the outer boundary of the EEZ around Hawaii Pacific pelagic management unit species that were harvested with longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long.

(bb) Use a receiving vessel registered for use under a receiving vessel permit described in § 660.21(c) to receive from another vessel Pacific pelagic management unit species harvested with longline gear, if the fish were harvested or the transfer occurs within the area north of 28° N. lat. and between 168° W. long. and 150° W. long.

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