

APPENDIX C

Proposed Regulations

Draft Regulations for Proposed Action

50 CFR

Wildlife and Fisheries

Chapter VI

Fishery Conservation and Management, National Oceanic and
Atmospheric Administration, Department of Commerce

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 § 660.12, the definition of "Pelagics FMP" is revised and new definitions for "Deep-set or Deep-setting", "Shallow-set or Shallow-setting", and "Shallow-set certificate", are added alphabetically to read as follows:

§ 660.12 Definitions.

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Deep-set or Deep-setting means the deployment of, or deploying, respectively, longline gear in a manner consistent with all the following criteria: with all float lines at least 20 meters in length; with a minimum of 15 branch lines between any two floats (except basket-style longline gear which may have as

few as 10 branch lines between any two floats); without the use of light sticks; and resulting in the possession or landing of no more than 10 swordfish (Xiphias gladius) at any time during a given trip. As used in this definition "float line" means a line used to suspend the main longline beneath a float and "light stick" means any type of light emitting device, including any fluorescent "glow bead", chemical, or electrically powered light that is affixed underwater to the longline gear.

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Pelagics FMP means the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region.

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Shallow-set or Shallow-setting means the deployment of, or deploying, respectively, longline gear in a manner that does not meet the definition of deep-set or deep-setting as defined in this section.

Shallow-set certificate means an original paper certificate that is issued by NMFS and valid for one shallow-set of longline gear (more than one nautical mile of deployed longline gear is a complete set) for sets that start during the period of validity indicated on the certificate.

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§ 660.21 [AMENDED]

3. In § 660.21, paragraphs (m) and (n) are removed.

4. In § 660.22, paragraphs (ff), (gg), (hh), (jj), (kk), (ll), (mm), (nn), (oo), (pp), (qq), (rr), and (ss) are revised, and paragraph (tt) is removed and reserved, to read as follows:
§ 660.22 Prohibitions.

* * * * *

(ff) Own or operate a vessel registered for use under a Hawaii longline limited access permit and fail to attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species in violation of § 660.34(a).

(gg) Operate a vessel registered for use under a Hawaii longline limited access permit without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.34(d).

(hh) From a vessel registered for use under a Hawaii longline limited access permit, make any longline set not of the type (shallow-setting or deep-setting) indicated in the notification to NMFS pursuant to § 660.23(a), in violation of § 660.33(h).

* * * * *

(jj) Fail to carry and use a line clipper, dip net, dehooker, and wire or bolt cutters on a vessel registered for use under a Hawaii longline limited access permit in violation of §

660.32(a).

(kk) Engage in shallow-setting without a valid shallow-set certificate for each shallow-set made in violation of § 660.33(c).

(ll) Fail to attach a valid shallow-set certificate for each shallow-set to the original logbook form submitted to the Regional Administrator under § 660.14, in violation of § 660.33(c).

(mm) Fail to comply with the sea turtle handling, resuscitation, and release requirements when operating a vessel registered for use under a Hawaii longline limited access permit in violation of § 660.32(b), (c), or (d).

(nn) Engage in the line-setting process from a vessel registered for use under a Hawaii limited access longline permit while shallow-setting north of 23° N. lat. during daylight hours in violation of § 660.35(a)(10).

(oo) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with hooks other than circle hooks sized 18/0 or larger, with 10° offset, in violation of § 660.33(f).

(pp) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with bait other than mackerel-type bait in violation of § 660.33(g).

(qq) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set component of the longline fishery has been closed pursuant to § 660.33(b)(3)(ii), in violation of § 660.33(i).

(rr) Have on board a vessel registered for use under a Hawaii longline limited access permit, at any time during a trip for which notification to NMFS under § 660.23(a) indicated that deep-setting would be done, float lines less than 20 meters in length or light sticks, in violation of § 660.33(d).

(ss) Transfer a shallow-set certificate to a person other than a holder of a Hawaii longline limited access permit in violation of § 660.33(e).

(tt) [Reserved]

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5. In § 660.23, paragraph (a) is revised to read as follows:

§ 660.23 Notifications.

(a) The permit holder for a fishing vessel subject to the requirements of this subpart, or an agent designated by the permit holder, shall provide a notice to the Regional Administrator at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around Hawaii. The vessel operator will be presumed to be an agent designated by the

permit holder unless the Regional Administrator is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional Administrator. The notice must provide the official number of the vessel, the name of the vessel, trip type (either deep-setting or shallow-setting), the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the agent designated by the permit holder to be available between 8 a.m. and 5 p.m. (Hawaii time) on weekdays for NMFS to contact to arrange observer placement.

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6. In § 660.32, paragraph (a)(1) is revised, paragraphs (a)(2) and (a)(3) are removed, paragraphs (a)(4) and (a)(5) are redesignated as paragraphs (a)(2) and (a)(3), respectively, and new paragraph (a)(4) is added, to read as follows:

§ 660.32 Sea turtle take mitigation measures.

(a) * * *

(1) Owners and operators of vessels registered for use under a Hawaii longline limited access permit must carry aboard their vessels line clippers meeting the minimum design standards as specified in paragraph (a)(2) of this section, dip nets meeting the minimum standards prescribed in paragraph (a)(3) of this section, dehookers meeting the minimum design standards prescribed in paragraph (a)(4) of this section, and wire or bolt

cutters capable of cutting through the vessel's hooks. These items must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hooks as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

* * * * *

(4) Dehookers. Dehookers are devices intended to remove embedded hooks from sea turtles and other animals in a manner that minimizes injury and trauma to the animals. The minimum design standards are that the device or devices can be used to grasp or engage a hook embedded in a sea turtle or other animal on board the vessel or in the water alongside the vessel and remove the hook with little injury or trauma to the animal.

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7. Section 660.33 is revised to read as follows:

§ 660.33 Western Pacific longline fishing restrictions.

(a) Limit on shallow-setting by Hawaii longline vessels.

(1) A maximum annual limit of 2,120 is established on the number of shallow-set certificates that will be made available each calendar year to vessels registered for use under Hawaii longline limited access permits.

(2) The Regional Administrator will divide the 2,120-set limit each calendar year into equal shares such that each holder

of a Hawaii longline limited access permit who provides notice of interest to the Regional Administrator no later than November 1 prior to the start of the calendar year, pursuant to paragraph (a)(3) of this section, receives a share. If such division would result in shares containing a fraction of a set, the limit will be adjusted downward such that each share consists of a whole number of sets.

(3) In order to be eligible to receive shallow-set certificates for a given calendar year, holders of Hawaii longline limited access permits must provide written notice to the Regional Administrator of their interest in receiving such certificates no later than November 1 prior to the start of the calendar year, except for 2004, the notification deadline for which is May 1, 2004.

(4) No later than June 1, 2004, and in every year subsequent, no later than December 1, the Regional Administrator will send shallow-set certificates valid for the upcoming calendar year to all holders of Hawaii longline limited access permits that provided notice of interest to the Regional Administrator pursuant to paragraph (a)(3) of this section.

(b) Limits on sea turtle interactions. (1) Maximum annual limits are established on the numbers of physical interactions that occur each calendar year between vessels registered for use under Hawaii longline limited access permits while shallow-

setting and:

- (i) Leatherback sea turtles (*Dermochelys coriacea*); and
- (ii) Loggerhead sea turtles (*Caretta caretta*).

(2) The two sea turtle interaction limits are set equal to the Annual Estimated Incidental Takes for the respective species in the shallow-setting component of the Hawaii-based longline fishery, as indicated in the latest Incidental Take Statement issued by NMFS in association with a Biological Opinion pursuant to section 7 of the Endangered Species Act.

(3) Upon determination by the Regional Administrator that, based on data from NMFS observers, either of the two interaction limits has been reached during a given calendar year:

(i) Within 2 days, the Regional Administrator will send notification of the limit having been reached by electronic mail, facsimile transmission, or post to all holders of Hawaii longline limited access permits. The notification will include an advisement that the shallow-set component of the longline fishery shall be closed and shallow-setting north of the equator will be prohibited starting 7 days after the date of the notification until the end of the calendar year in which the limit was reached.

(ii) Starting 7 days after notification pursuant to paragraph (b)(3)(i) of this section until the end of the calendar year in which the limit was reached, the shallow-set component of

the longline fishery shall be closed.

(c) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may engage in shallow-setting north of the equator (0° lat.) providing that there is on board one valid shallow-set certificate for every shallow-set that is made during the trip. For each shallow-set made north of the equator (0° lat.) vessel operators must submit one valid shallow-set certificate to the Regional Administrator. The certificate must be attached to the original logbook form that corresponds to the shallow-set and that is submitted to the Regional Administrator within 72 hours of each landing of management unit species as required under § 660.14.

(d) Vessels registered for use under a Hawaii longline limited access permit may not have on board at any time during a trip for which notification to NMFS under § 660.23(a) indicated that deep-setting would be done any float lines less than 20 meters in length or light sticks. As used in this paragraph "float line" means a line used to suspend the main longline beneath a float and "light stick" means any type of light emitting device, including any fluorescent "glow bead", chemical, or electrically powered light that is affixed underwater to the longline gear.

(e) Shallow-set certificates may be transferred only to holders of Hawaii longline limited access permits.

(f) Owners and operators of vessels registered for use under a Hawaii longline limited access permit must use only circle hooks sized 18/0 or larger, with 10° offset, when shallow-setting north of the equator (0° lat.).

(g) Owners and operators of vessels registered for use under a Hawaii longline limited access permit must use only mackerel-type bait when shallow-setting north of the equator (0° lat.).

(h) Owners and operators of vessels registered for use under a Hawaii longline limited access permit may make sets only of the type (shallow-setting or deep-setting) indicated in the notification to NMFS pursuant to § 660.23(a).

(i) Vessels registered for use under Hawaii longline limited access permits may not be used to engage in shallow-setting north of the equator (0° lat.) any time during which the shallow-set component of the longline fishery is closed pursuant to paragraph (b)(3)(ii) of this section.

8. Section 660.34 is revised to read as follows:

§ 660.34 Protected species workshop.

(a) Each year both the owner and the operator of a vessel registered for use under a Hawaii longline limited access permit must attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species.

(b) A protected species workshop certificate will be issued

by NMFS annually to any person who has completed the workshop.

(c) An owner of a vessel registered for use under a Hawaii longline limited access permit must maintain and have on file a valid protected species workshop certificate issued by NMFS in order to maintain or renew their vessel registration.

(d) An operator of a vessel registered for use under a Hawaii longline limited access permit and engaged in longline fishing must have on board the vessel a valid protected species workshop certificate issued by NMFS or a legible copy thereof.

9. In § 660.35, new paragraph (a)(10) is added to read as follows:

§ 660.35 Pelagic longline seabird mitigation measures.

(a) * * *

(10) When shallow-setting north of 23° N. lat., begin the line-setting process at least one hour after local sunset and complete the setting process no later than local sunrise, using only the minimum vessel lights necessary for safety.

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§ 660.36 [REMOVED AND RESERVED]

10. Section 660.36 is removed and reserved.