

**Subject:** Longline  
**From:** LaPazKD@aol.com  
**Date:** Sat, 11 Sep 2010 12:50:50 -0400 (EDT)  
**To:** Kit.Dahl@noaa.gov

Kit,

Attached are three documents. Two are letters from NMFS to the PFMC regarding the high-seas longline fishery prohibition. The last document is the letter, (July 16, 2010), I sent to the Council. I have inserted background information for the main points in the letter. The bold faced yellow highlighted text is the background information.

See you in Idaho,

Pete Dupuy

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July 16, 2010

Dave Ortmann, Chair,  
Pacific Fishery Management Council  
7700 NE Ambassador Pl, Suite 200  
Portland, OR 97220-1384

Dear Mr. Ortmann,

I am writing to ask the Council to begin the process for modifying an existing HMS high-seas pelagic longline fishery regulation. **(HMS FMP section 8.3.4, Framework Process for Rulemaking Actions, lists: “ to reduce conflict and provide for orderly fisheries; to allocate among domestic HMS fisheries; to address social or economic issues; to facilitate management of the fisheries; to meet goals and objectives of the FMP; and, to respond to changes in management of HMS in other areas of the Pacific; are all valid reasons for adopting framework measures. Additionally, gear restrictions is specifically listed as a type of measure authorized to be established, adjuster, or removed using the framework process.)** Of the provisions found under 50 CFR §660.712 (a), all provisions pertaining to the high-seas fishery are obsolete, especially those provisions limiting or prohibiting the directed take of swordfish. **(The Pacific Council’s HMS FMP included a high-seas longline fishery east of 150 west longitude when it was submitted to NMFS for approval. This is reflected in the proposed rule to implement the HMS FMP that was published in the Federal Register on December 10, 2003. Under the proposed rule, the section regulating longline gear and fishing restrictions, 660.712(a)(1 through 10), allows for targeting swordfish, east of 150 degrees west longitude, with shallow-set longline gear.)** This regulation was originally implemented to insure that the Pacific Council’s high-seas longline regulations were consistent with the West Pacific Council’s high-seas longline regulations. **(NMFS disapproved the portion of the HMS FMP that included the high-seas longline fishery east of 150 west longitude. The final rule that implemented the HMS FMP was published in the Federal Register on April 7, 2004. Under the final rule, subsection 11 was added to section 660.712(a). Subsection 11 notes that the use of longline gear is subject to the provisions at 50 CFR part 223 (ESA regulations) prohibiting shallow sets to target swordfish east of 150 west longitude, and establishing that no more than 10 swordfish may be landed by a longline vessel if fishing in those waters. The proposed rule to implement the ESA prohibition against targeting swordfish with shallow-set longline gear, 223.206(d)(9)(i through viii), was published in the Federal Register on December 17, 2003 (the final rule was published on March 11, 2004). These restrictions were proposed by NMFS in order to protect sea turtles from shallow-set longline vessels targeting swordfish that are not operating under a western Pacific longline permit.)**

However, the conditions that once warranted such regulations no longer exist, **( In a March 31, 2004 letter from NMFS informing the Pacific Council that NMFS had approved the HMS FMP with the exception of the high-seas longline restrictions**

**which were enacted under the ESA. NMFS also advised that shallow-set longline could be allowed if alternative longline gear and bait combinations were required. Use of circle hooks and mackerel type bait had proved to significantly reduce sea turtle interactions and consequent injury or mortality in other HMS longline fisheries.)** and the West Pacific Council modified their longline fishing regulations to reflect current conditions and best longline fishing practices. **(Existing longline fishery restrictions under the Western Pacific Pelagics FEP, 50 CFR 665.33, which were enacted to allow shallow-set longline fishing and mitigate incidental sea turtle interactions, include the mandated use of circle hooks, (665.33(f)), and mackerel-type bait (665.33(g)).**

The original intent of section 660.712 was to provide a west coast counterpart to the West Pacific Council's longline regulations in order to effectuate consistent high-seas management of the Pacific U.S. longline fishery between the two Councils. **(Section 1.5, Purpose and Need for the HMS FMP, states, "An FMP provides a mechanism for collaboration with the other Pacific area councils to achieve more consistent management of fisheries which harvest stocks in common. In particular, there is a need to ensure that some or all restrictions on Hawaii-based longliners to protect turtles and sea birds also apply to West Coast based longliners.")**

The present regulatory inconsistency noted above thwarts this intent. Section 660.712 needs to be modified so that the West Pacific Council regulations are once again consistent with those of the Pacific Council.

Thank you for your attention to this matter.

Pete Dupuy

cc. Rodney McInnis, Regional Administrator, NMFS, SW Region



**FILE**  
**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE

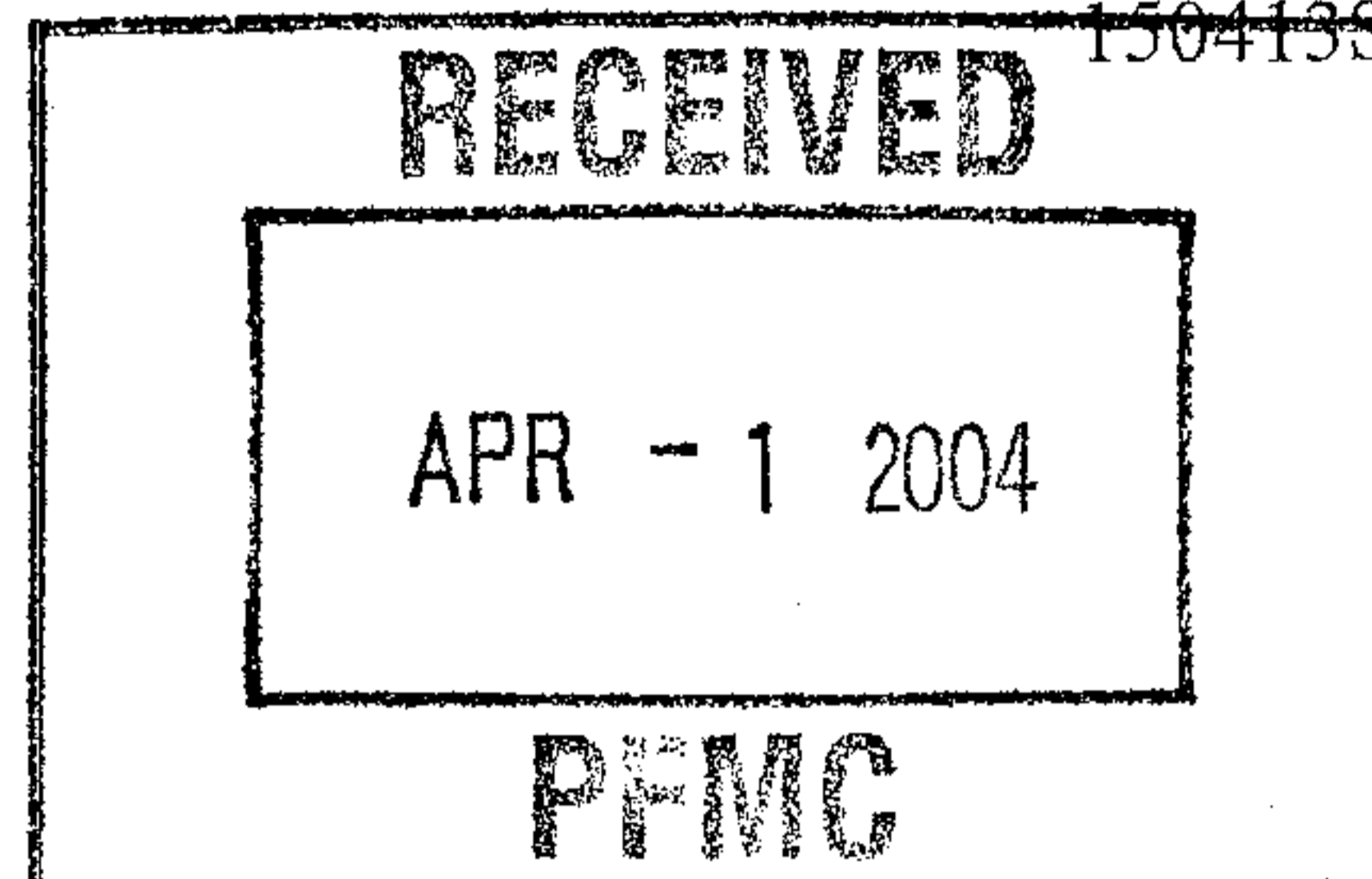
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802- 4213

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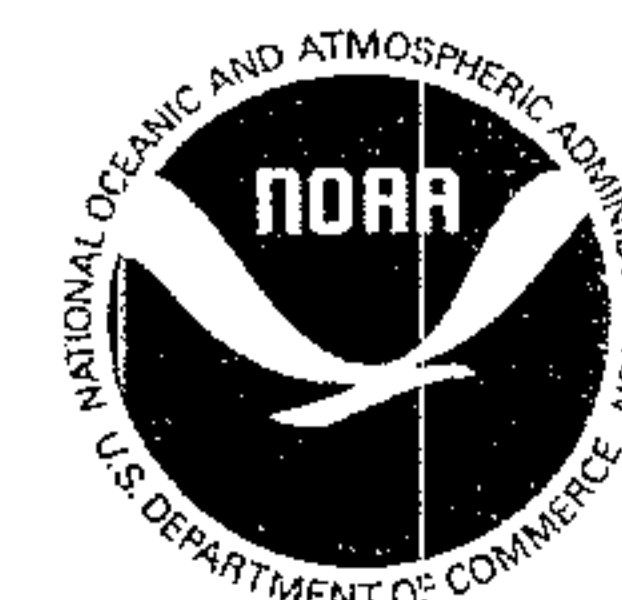
Mr. Donald Hanson, Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384

Dear Mr. Hanson:

I am writing to follow up on my February 4, 2004, letter informing you that, with the exception of one provision, I had approved the Pacific Fishery Management Council's proposed Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP). In that letter, I indicated that I disapproved the provision that would have allowed shallow-set longline fishing by west coast-based vessels targeting swordfish in waters beyond the U.S. exclusive economic zone (EEZ) east of 150° W. longitude. This was based on the result of consultations under section 7 of the Endangered Species Act (ESA) that determined that the levels of takes and mortalities that were projected to occur in the fishery under the Council's proposed management program would appreciably reduce the likelihood of survival and recovery of loggerhead sea turtles. I also indicated that National Marine Fisheries Service (NOAA Fisheries) was separately publishing rules under the authority of the ESA that would prohibit shallow sets in the waters east of 150° W. longitude. The ESA regulations have now been published and will be effective April 12, 2004. The final rule for the FMP is in process and should be published soon.

In my previous letter, I also noted that the Magnuson-Stevens Act (section 304(a)(1)) requires that, if an FMP is disapproved in part or in whole, the Council must be advised of actions it can take to address the FMP provisions that were disapproved. I provided some initial information in this regard. I would like to update that information in hopes that the Council will consider an FMP amendment that will ultimately eliminate the need for the ESA rule.

As I indicated in February, NOAA Fisheries believes that the results of research in the Atlantic Ocean demonstrates clearly that there are alternative gear and bait combinations available to longline fishing that significantly reduce sea turtle interactions and consequent injury to or mortality of sea turtles. The research concluded that encounters with leatherback and loggerhead turtles in the Atlantic Ocean can be reduced by 65 to 90 percent by switching the type of hook and bait from the traditional "J" style hook with squid to a large, circular hook with mackerel. In addition, the nature of hookings is less damaging as the large hooks are far less likely to be deeply swallowed and lethal. In addition, new de-hooking and release devices and techniques have been developed, further reducing the likelihood of major injury to or death of turtles. The Council has received copies of news releases and summary information on the results of the research. A copy of a powerpoint presentation on this research is enclosed. I believe this information will be very useful to the team and the advisory subpanel in



considering the possible use of gear restrictions as a tool for reducing sea turtle takes and mortality in the longline fishery. Second, I am pleased to inform you that NOAA Fisheries has approved proposed new regulations to govern the longline fishery for the Hawaii-based fleet. This proposed new strategy of the Western Pacific Fishery Management Council includes a combination of fleet effort limits, transferable individual vessel effort limits, a requirement to use circle hooks and mackerel bait, and numerical limits on annual sea turtle takes in the fishery based on observers' records. A section 7 consultation was completed on this proposal and concluded that the fishery, if operated under these controls, would not jeopardize the continued existence of any species of sea turtle. A copy of the Biological Opinion on this proposal has been provided to the Pacific Council under separate cover. The final rule implementing this action is enclosed.

I believe the Pacific Council now has information that provides a basis for developing alternatives that could allow longline fishing for swordfish without jeopardizing any ESA listed species. I recommend that the Council direct its management team to consider this information to develop and analyze alternative sets of comparable conservation and management measures under which the longline fishery off the West Coast might be able to target swordfish with low levels of marine turtle takes. This could include consideration of a longline limited entry program (as the Council has already directed the team to explore), a limit on overall longline fishing effort targeting swordfish by West Coast vessels, individual vessel effort limits, gear and bait requirements, time/area limits, turtle take limits, or other measures that would limit sea turtle mortality to low levels approximating those that had previously been found in the drift gillnet fishery not to result in jeopardy to any listed sea turtles. I commit the Southwest Region to work closely with the Council and its advisory bodies as well as to coordinate with the Pacific Islands Region and the Office of Protected Resources to the extent possible to ensure that the best scientific information available is used in developing and evaluating the potential impacts of alternative approaches.

Again, congratulations to the Council on developing this new FMP. I look forward to working closely with you and your staff and the states to implement this FMP, and will report on our progress as it occurs.

Sincerely,



Rodney R. McInnis  
Acting Regional Administrator

Enclosures

cc: F - W. Hogarth, Ph.D.  
F/NWR - B. Lohn  
GCSW - J. Feder  
GCNW - E. Cooney  
F/NWR - B. Robinson  
F/PIR - S. Pooley, Ph.D.

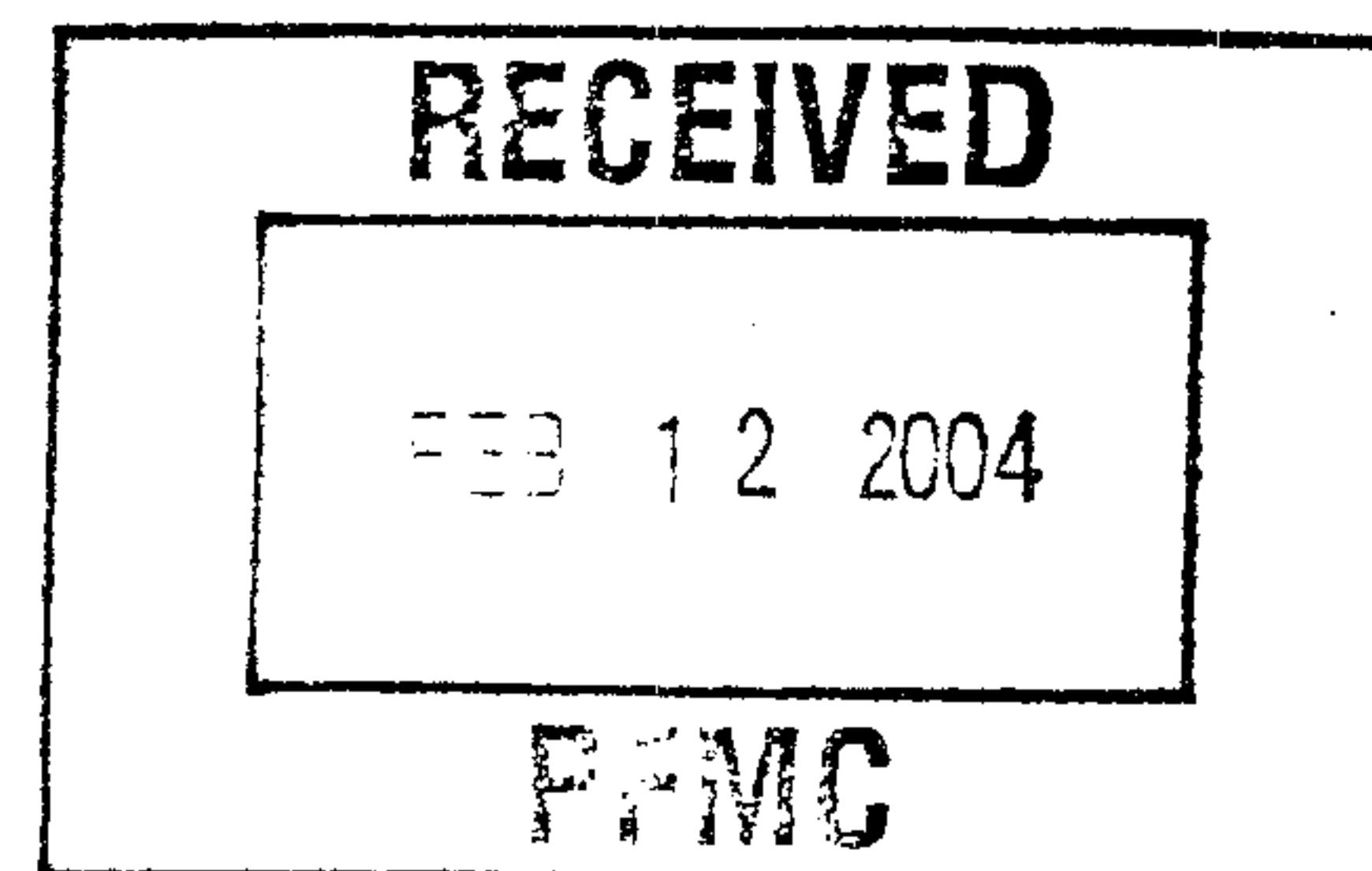


**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802- 4213

FEB - 4 2004

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Mr. Donald Hanson, Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384



Dear Mr. Hanson:

I am pleased to inform you that, with the exception of one provision, I have approved the Pacific Fishery Management Council's proposed Fishery Management Plan for U.S. West Coast Highly Migratory Species (FMP). There is broad agreement that this FMP is a major step forward toward effective management of these important west coast fisheries and resources. Notwithstanding the provision disapproved, I compliment you and the Council on both the quality of the FMP and the open and collaborative process by which the FMP was developed.

The provision that I have disapproved would have allowed shallow-set longline fishing by west coast-based vessels targeting swordfish in waters beyond the U.S. exclusive economic zone (EEZ) east of 150° W. longitude. The FMP would prohibit longline fishing in the EEZ off the west coast, and would prohibit the longline fishery from making shallow sets to target swordfish sets in waters beyond the EEZ and west of 150° W. longitude. At the time the Council adopted the FMP, the Council had been provided with information about potential impacts of the fishery on endangered and threatened sea turtles if fishing shallow set longline fishing strategy were adopted and about the likelihood of FMP disapproval on this basis.

During review of the proposed FMP, the National Marine Fisheries Service (NOAA Fisheries) initiated consultations under section 7 of the Endangered Species Act (ESA) to determine if the levels of takes and mortalities that were projected to occur in the fishery under the Council's proposed management program would appreciably reduce the likelihood of survival and recovery of listed species of sea turtles. Shallow-set longline fishing has been shown to have high rates of interaction with sea turtles (especially loggerhead and leatherback sea turtles). Currently, all west coast longline vessels (approximately 20 vessels) fish in this manner. The Biological Opinion (BO) resulting from the consultation concluded that, if allowed to make shallow sets in the waters east of 150° W. longitude at recent effort levels, the longline fishery would take turtles at levels that would appreciably reduce the likelihood of survival and recovery of at least one species of sea turtle. Therefore, that provision has been disapproved as not being consistent with the ESA, meaning that the FMP does not comply with "other applicable law" (section 303(a)(1)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)). A copy of the BO will be provided to the Council under separate cover.

NOAA Fisheries has separately published (68 FR 70219, December 17, 2003) a proposed rule under the authority of the ESA that would prohibit shallow sets in the waters east of 150° W. longitude. This was published prior to action on the FMP to ensure that, if the review of the Council's FMP concluded that its proposed management program would be inadequate, then NOAA Fisheries would have corrective regulations in place until the Council could make the necessary changes to its management program. Under this approach, the ESA regulations could be implemented at the same time as the FMP implementing regulations if they were deemed necessary after the section 7 consultation and action on the proposed FMP. In fact, this rule is now deemed necessary. The BO concluded that the fisheries as they would operate under the conservation and management measures of the FMP, and the ESA companion rule would not jeopardize the continued existence of any species of sea turtle. NOAA Fisheries will therefore proceed to finalize this rule on the same time track as the final rule for the FMP.

The Magnuson-Stevens Act (section 304(a)(1)) requires that, if an FMP is disapproved in part or in whole, the Council must be advised of actions it can take to correct the FMP. The following information is provided to satisfy this requirement.

First, NOAA Fisheries is very pleased with the results of recent research in the Atlantic Ocean regarding the use of alternative gear and bait combinations in longline fishing to reduce sea turtle interactions and consequent injury or mortality to sea turtles. A copy of the news release summarizing the achievements of that research is enclosed. The research concluded that encounters with leatherback and loggerhead turtles in the Atlantic Ocean can be reduced by 65 to 90 percent by switching the type of hook and bait from the traditional "J" style hook with squid to a large, circular hook with mackerel. In addition, the nature of hookings is less damaging as the large hooks are far less likely to be deeply swallowed and lethal. In addition, new de-hooking and release devices and techniques have been developed, further reducing the likelihood of major injury to or death of turtles. NOAA Fisheries is actively promoting adoption of this new gear in the international arena given that this is a global problem. NOAA Fisheries also plans to undertake additional research into the use of this gear in longline tuna fishing, which also is known to have sea turtle interactions.

Second, in January 2004, NOAA Fisheries convened 17 experts in the areas of biology, veterinary medicine, anatomy/physiology, satellite telemetry, and longline gear deployment for a Workshop on Marine Turtle Longline Post-Interaction Mortality. These experts presented and discussed recent data available on the survival and mortality of sea turtles subsequent to being hooked by fishing gear. Based on the data gathered during that workshop, NOAA Fisheries revised its February 2001 post-hooking mortality criteria. The Southwest Region will work with its observer contractor to make sure that future observers collect more detailed interaction information to better support application of this new policy.

Third, new regulations to govern the longline fishery for the Hawaii-based fleet are needed by April 1, 2004, in response to a court decision. The Western Pacific Fishery Management Council has submitted a proposal (summary enclosed) that would allow shallow longline sets targeting

swordfish but that proposes to limit sea turtle takes and mortality through a combination of fleet effort limits, transferable vessel effort limits, a requirement to use circle hooks and mackerel bait, a limit on estimated sea turtle takes, in the fishery based on observer records, and other measures. This proposal is being reviewed by NOAA Fisheries, and a section 7 consultation is underway. I will advise the Pacific Council of the results of the consultation and NOAA Fisheries' action on this proposal.

I believe this information will be very useful to the Council in considering adjustments to its fishery management regime that can allow fishing without jeopardizing any ESA listed species. NOAA Fisheries' action on the Western Pacific Council's proposal has implications for potential approvability of similar approaches for the west coast longline fishery. I recommend that the Council direct its management team to review this information and to begin developing and analyzing alternative sets of comparable conservation and management measures under which the longline fishery off the west coast might be able to target swordfish with low levels of marine turtle takes. This could include consideration of limited longline fishing for swordfish with effort limits, gear and bait requirements, time/area limits, turtle take limits, or other measures that would limit sea turtle mortality to low levels approximating those that had previously been found in the drift gillnet fishery not to result in jeopardy to any listed sea turtles. I commit the Southwest Region to work closely with the Council and its advisory bodies as well as to coordinate with the Pacific Islands Region and the Office of Protected Resources to the extent possible to ensure that the best scientific information available is used in developing and evaluating the potential impacts of alternative approaches.

Again, congratulations to the Council on developing this new FMP. I look forward to working closely with you and your staff and the states to implement this FMP, and will report on our progress as it occurs.

Sincerely,



Rodney R. McInnis  
Acting Regional Administrator

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