



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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F/SWR2:SF

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

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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

Enclosures

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