

Scoping Report on Amendment 2 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species to Authorize a Shallow-set Longline Fishery Seaward of the EEZ

1 Introduction

On August 7, 2008, the National Marine Fisheries Service (NMFS) published a notice of intent (NOI) to prepare a supplemental environmental impact statement (SEIS) on Amendment 2 to the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (73 FR 45965). Amendment 2 would change the FMP to authorize a shallowset longline fishery in waters seaward of the U.S. west coast exclusive economic zone (EEZ) in the Pacific Ocean. The Pacific Fishery Management Council (Council) has been considering such an amendment since mid-2007 in order to address provisions in the FMP that were disapproved by NMFS when the plan was originally implemented in 2004.

This scoping report describes the proposed action, and the reason the Council and NMFS are undertaking it; describes alternatives formulated by the Council for evaluation in the SEIS; and summarizes comments received in response to the NOI, which solicited written comments on the proposed action during a 30-day period ending September 8, 2008.

Currently, the Council is scheduled to choose a preferred alternative at their April 4-9, 2009, meeting in Millbrae, California. A preliminary draft SEIS will be prepared in advance of this meeting to support Council decision-making. Once the Council has selected a preferred alternative the action will be subject to a section 7 consultation pursuant to the Endangered Species Act (ESA), because threatened and endangered sea turtles are likely to be affected by authorization of the fishery; ESA-listed marine mammals and birds may also be affected. The purpose of the section 7 consultations is to ensure that the action is not likely to jeopardize the continued existence of any listed species. For this action NMFS's Sustainable Fisheries Division will consult with the agency's Protected Resources Division, because NMFS is both the action agency and the agency responsible for ESA matters in relation to marine turtle species, as well as most marine mammals and fish. A separate consultation will be initiated with the United States Fish and Wildlife Service (FWS) due to possible effects on ESA-listed short-tailed albatross. The result of the section 7 consultation is a biological opinion that documents the agency's determination on whether the fishery is likely to jeopardize ESA-listed species. If it is determined that the action is likely to cause jeopardy to listed species, measures are required to reduce the impacts to a level such that the revised action would not cause jeopardy. In addition to the ESA process, after the Council chooses a preferred alternative, NMFS will publish the draft SEIS for a minimum 45-day public comment period. Before the action can be implemented NMFS must review and approve the FMP amendment and promulgate any necessary regulations.

2 The Proposed Action and Why the Council and NFMS are Considering It

The proposed action is to amend the HMS FMP to authorize a shallow-set longline (SSLL) fishery seaward of the EEZ and east of either 150° or 140° W longitude or across the entire north Pacific. Use of SSLL gear is currently not authorized under the FMP and is prohibited by an ESA regulation, because, as originally proposed in the HMS FMP, this type of fishing without sufficient mitigation measures has been found to jeopardize the continued existence of loggerhead sea turtles, which are listed as threatened under the Endangered Species Act (ESA). The fishery authorized through Amendment 2 to the HMS FMP

would incorporate the use of innovative longline gear and methodologies and be subject to a range of restrictions and mitigation measures so as to not jeopardize the continued existence of any species listed under the ESA. Other restrictions and mitigation measures could also be applied to minimize the take of seabirds, consistent with other applicable law. Impacts to non-ESA-listed marine mammals will also be evaluated and mitigated to the extent practicable, consistent with the Marine Mammal Protection Act (MMPA),

The HMS FMP, as submitted to NMFS for approval by the Council in August 2003, would have authorized a West Coast-based SSL fishing on the high seas outside the EEZ; however, on February 4, 2004, NMFS informed the Council that it had approved the HMS FMP with the exception of the provision that would have allowed SSL fishing by west coast-based vessels targeting swordfish east of 150° W longitude. The disapproval was based on the ESA section 7 consultation for the HMS FMP, which concluded that allowing shallow sets for swordfish with traditional gear and no effort limits east of 150° W longitude would appreciably reduce the likelihood of survival and recovery of threatened loggerhead sea turtles (i.e., jeopardize their continued existence). At about the same time, the Hawaii-based shallow-set longline fishery was re-opened due to the adoption of sea turtle take mitigation measures like those that would be adopted under Amendment 2. Hawaii-permitted vessels may currently fish seaward of the U.S. west coast EEZ and east of 150° W longitude and land on the U.S. west coast; however, it is unclear how many may have done so since 2004.¹ In 2008, at least one Hawaii-permitted vessel fished shallow-set longline gear outside the EEZ and landed on the West Coast (Oregon).

Section 204(a)(3) of the Magnuson-Stevens Act requires NMFS, if an FMP is disapproved in part or in whole, to advise the Council of actions it can take to address the disapproved FMP provisions. In a letter dated February 4, 2004, NMFS indicated to the Council that alternative gear and bait options (e.g., circle hooks and mackerel bait) being tested in the U.S. Atlantic SSL swordfish fishery had proven successful in significantly reducing sea turtle interactions and consequent injury to and mortality of sea turtles. NMFS advised the Council that possible use of alternative gear and bait requirements, effort limits, time/area limits, turtle take limits, or other measures that would limit sea turtle mortality to low levels by any future west coast-based SSL fishery might provide the necessary conservation and management measures to operate a fishery without jeopardizing the continued existence of ESA-listed sea turtles. In his February 4, 2004, letter informing the Council of the partial disapproval, Regional Administrator Rodney McInnis concluded by stating:

I believe [the information discussed in this letter] 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.

Since that time, the alternate gear and bait options have reduced overall marine turtle interactions by 89 percent in the Hawaii-based SSL swordfish fishery, and have also proven successful in foreign longline swordfish fisheries (e.g., Brazil, Italy, Ecuador and Uruguay), resulting in significant reductions in sea

¹ Some pelagic longline swordfish landings have been recorded in the PacFIN database since April 2004. However, further investigation is required to determine if these were made by Hawaii-permitted vessels.

turtle interactions and mortalities while maintaining economically viable fisheries. As a result of these successful gear innovations, NMFS recommended at the April 2007 meeting that the Council re-visit the disapproved portion of the HMS FMP.

The proposed action is intended to allow for an economically viable shallow-set longline fishery to be reestablished, supplying fresh fish to west coast markets. The management framework must mitigate adverse impacts as prescribed by applicable law, particularly the ESA, thereby completing the part of the HMS FMP that was disapproved. Who will participate in any such fishery must also be considered, because Mr. McInnis recommended considering effort limits. To the degree that effort is limited, for example through a limited access privilege program, several factors will be used to consider future participation in any authorized fishery: 1) participation in the historical longline fishery that existed until April 2004; 2) recent history of landing swordfish on the west coast in terms of total amount at both the individual level and for gear types as a whole; 3) suitability of vessels for operating in a longline fishery outside the EEZ; and 4) opportunities to shift fishing effort away from gear types with higher adverse environmental impacts than shallow-set longline gear

By responding to the charge laid out in Mr. McInnis's letter the action would also help to carry out the goals and objectives of the HMS FMP. Specifically, the proposed action would address the following FMP goals and objectives:

- Provide a long-term, stable supply of high-quality, locally caught fish to the public.
- Minimize economic waste and adverse impacts on fishing communities to the extent practicable when adopting conservation and management measures.
- Provide viable and diverse commercial fisheries and recreational fishing opportunity for highly migratory species based in ports in the area of the Pacific Council's jurisdiction, and give due consideration for traditional participants in the fisheries.
- Manage the fisheries to prevent adverse effects on any protected species covered by MMPA and MBTA and promote the recovery of any species listed under the ESA to the extent practicable.

In implementing the action the following goals and objectives need to be taken into account:

- Promote and actively contribute to international efforts for the long-term conservation and sustainable use of highly migratory species fisheries that are utilized by west coast-based fishers, while recognizing these fishery resources contribute to the food supply, economy, and health of the nation.
- Implement harvest strategies which achieve optimum yield for long-term sustainable harvest levels.
- Promote inter-regional collaboration in management of fisheries for species which occur in the Pacific Council's managed area and other Councils' areas.
- Minimize inconsistencies among Federal and state regulations for highly migratory species fisheries.
- Minimize bycatch and avoid discard and implement measures to adequately account for total bycatch and discard mortalities.

- Prevent overfishing and rebuild overfished stocks, working with international organizations as necessary.
- Promote effective monitoring and enforcement.

3 Alternatives Including the Proposed Action

The Council initially adopted a range of alternatives for analysis at their March 2008 meeting. At their September 2008 meeting they made modifications to the alternatives to clarify features in the alternatives and to add requirements on permit transfer and simultaneous use of a limited entry permit proposed under alternative 2 and a Hawaii longline limited entry permit. They also added an alternative (alternative 3).

3.1 Alternative 1: Status Quo

Unless possessing both a Hawaii longline limited access permit (pursuant to the WPFMC Pelagics FMP, see 50 CFR 660.21) and a PFMC HMS FMP permit, swordfish caught using shallow-set longline (SSLL) gear cannot be landed on the west coast. Regulations pursuant to the HMS FMP prohibit such landings from fishing west of 150° W longitude. Endangered Species Act regulations prohibit such landings for swordfish caught east of 150° W longitude.

3.2 Alternative 2: A West Coast Limited Entry Program for SSLL Seaward of the West Coast EEZ

3.2.1 Sea Turtle Take Mitigation Measures

3.2.1.1 Area Closure Options

In addition to the current closure of the west coast EEZ, the fishery is only permitted:

- Option 1:** East of 150° W longitude
- Option 2:** East of 140° W longitude
- Option 3:** No area closure west of the current west coast EEZ closure.

3.2.1.2 Gear and Other Mitigation Measures

The fishery would be subject to the following measures to mitigate potential impacts to ESA-listed loggerhead and leatherback sea turtles:

- Gear requirements, consistent with those currently applicable to Hawaii longline limited access permit holders fishing with SSLL gear. These include the requirement to use circle hooks and mackerel-type bait, and for skippers to attend a workshop presented by NMFS Protected Resources Division.
- 100 percent observer coverage.
- Take caps for loggerhead and leatherback sea turtles would be established as part of the action, sufficient so that the proposed action is not found to jeopardize the continued existence of these ESA-listed species. These take caps would be based on the anticipated take amounts estimated in the biological opinion that will be completed for this proposed action. There could be several different ways to decide on these cap levels:
 1. The Council could recommend take cap levels as part of the preferred alternative, based on informal consultation with NMFS Protected Resources Division.

2. After selecting a preliminary preferred alternative, consultation with NMFS would begin and a draft biological opinion would be prepared, which would include recommendations to reduce impacts on ESA species, particularly if the draft analysis suggests that the action may jeopardize a species. The Council could then take subsequent final action to modify the take cap levels, if necessary, based on a review of the biological opinion;
3. If the estimated take of turtles under the final preferred alternative, including the turtle take caps proposed by the Council, is determined to cause jeopardy, a Reasonable and Prudent Alternative in the biological opinion would require changes to the fishery or lowering the caps to lower take sufficient to avoid jeopardy. This would be the least attractive approach, because the changes required under the RPA may not be consistent with the goals of the Council. It is preferable for the Council's proposed to allow a no jeopardy finding without the application of a Reasonable and Prudent Alternative.

Take caps would be renewed annually and the fishery closes until the end of the fishing year (April 1-March 31) if either are ever reached during the fishing year. The fishery opens again at the start of the next year.

3.2.2 Limited Entry Program

3.2.2.1 Number of Permits

The potential fishery will be evaluated based on a fishery with an estimate of maximum fishing effort of 1 million to 1.5 million hooks. A maximum of 20 permits would be issued; the actual number of permits issued would be based on an evaluation of what would be an economically viable number, considering the effort estimate.

For the purpose of analysis the following options are included:

- Option 1:** 20 permits
- Option 2:** 15 permits
- Option 3:** 10 permits
- Option 4:** 5 permits

3.2.2.2 Recent Participation Requirement

In order to qualify for a permit the applicant would have to have made at least one swordfish landing on the west coast in any year from 2001 to 2007 inclusive.

3.2.2.3 Limit on Permit Transfer

In the first:

- Option 1:** 1 year
- Option 2:** 2 years

after initially receiving a permit, the permit holder cannot transfer the permit.

To transfer the permit, the permit holder must make (**options:** 0-5) landings in the initial time period (1 to 2 years) in order to be eligible to transfer the permit.

3.2.2.4 *Limit on Simultaneous Use of a West Coast SSLL Permit and a Hawaii Longline Limited Access Permit*

In any given calendar year a person cannot not exercise / utilize both a west coast SSLL permit and a Hawaii longline limited access permit to fish for swordfish.

3.2.2.5 *Qualification Criteria*

Applicants would first be screened according to the recent participation requirement (option above). Then a ranking of qualified applicants to receive limited entry permits would be based on one of the following options. Under each of the given options, applicants would be ranked in decreasing order according to the applicable formula, and permits would be issued based on this rank order up to the maximum authorized number of permits.

Qualification Option 1

Applicants are ranked sequentially based on their total swordfish landings on the west coast, 1996-2007, with (1) pelagic longline gear and with (2) drift gillnet gear. Pelagic longline landings are attributed to the person owning the vessel in 2007. Drift gillnet (DGN) landings are attributed to the person owning the California DGN permit or Oregon DGN developmental fishery permit in 2007.²

Permits are issued up to the maximum number authorized in rank order according to combined landings.

Qualification Option 2

A point system for individuals based on the following criteria:

1. Possessed a DGN permit in 2007.
2. Possessing a DGN permit in 2007 and made landings of swordfish on the west coast using pelagic longline gear in 2007.
3. Possessed a DGN permit in 2007 and made swordfish landings 1996-2007 using any gear.
4. Number of years owning a DGN permit.

The scoring system is as follows:

1. One point would be awarded to each individual possessing a DGN permit in 2007 ($Q_1 = 1$ if a DGN permit holder, 0 otherwise).
2. One point would be awarded to each individual possessing a DGN permit in 2007 who made landings of swordfish on the west coast using pelagic longline gear in 2007 ($Q_2 = 1$ if this condition is met, 0 otherwise).
3. For applicants possessing a DGN permit in 2007 who made west coast swordfish landings between 1996 and 2007 using any gear, a point would be awarded for each year the applicant made at least one west coast swordfish landing during this period ($Q_3 = 0-7$).
4. A point would be awarded for each year the applicant owned a DGN permit ($Q_4 =$ number of years of DGN permit ownership).

The ranking are based on a formula (F_2) calculated for an applicant as the sum of the first three point amounts plus a weighted multiple of the fourth criterion. Different values for this weighting factor (w_1) will cause the scoring to more or less value length of permit ownership.

² No Oregon developmental fishery permits were issued for DGN gear or longline gear in 2007.

The resulting formula is:

$$F_2 = Q_1 + Q_2 + Q_3 + w_1 * Q_4$$

Ties will be broken by using the total amount of swordfish landings, 1996-2007.

Permits are issued up to the maximum number authorized in rank order according to the scoring system.

Qualification Option 3

A point system for SSSL based on the following criteria:

- The number of years in which at least one swordfish landing was made on the west coast 1996-2007 with pelagic longline gear.
- The number of swordfish landings on the west coast made 1996-2007 with pelagic longline gear.

The scoring system is as follows:

1. The sum of the number of years in which at least one swordfish landing was made on the west coast 1996-2006 with SSSL gear (S_1)
2. A weighted multiple of the tonnage of swordfish landings on the west coast made 1996-2006 with SSSL gear (S_2):

$$F_3 = S_1 + w_2 * S_2$$

with a weight w_2 chosen to make S_1 and $w_2 * S_2$ of comparable magnitudes.

Permits are issued up to the maximum number authorized in rank order according to the scoring system.

Qualification Option 4

A scoring system based on a weighted sum of the previous three ranking systems in the qualification options 1-3 is used. The formula is:

$$F_4 = F_1 + v_1 * F_2 + v_2 * F_3$$

With weights v_1 and v_2 chosen to make F_1 , $v_1 * F_2$, and $v_2 * F_3$ of comparable magnitudes.

Permits are issued up to the maximum number authorized in rank order according to the scoring system.

3.3 Alternative 3: A Limited Entry Program with no Cap on the Number of Permits

Any person having made at least one swordfish landing on the west coast during the years 2005-07 would qualify for a permit.

The management framework would contain the following provisions:

- The fishery is constrained to east of 140° W longitude.
- The sea turtle take mitigation measures listed under Alternative 2 (gear requirements, 100 percent observer coverage, take caps) would apply.

3.4 Alternative 4: Open Access

Under this alternative no new permit requirement would be established. Participation in the fishery would not be limited by permit.

The management framework would contain the following provisions:

- For analysis overall effort is estimated at 1 million to 1.5 million hooks annually.
- The fishery is constrained to east of 140° W longitude.
- Owners of a Hawaii longline limited access permit would not qualify for participation in this fishery.
- The sea turtle take mitigation measures listed under Alternative 2 (gear requirements, 100 percent observer coverage, take caps) would apply.

4 Public Scoping

Public involvement is an important part of the scoping process. According to NEPA regulations (40 CFR 1501.7) scoping is “an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action.” Public scoping is designed to provide interested citizens, government officials, and tribes an opportunity to help define the range of issues and alternatives that should be evaluated in the EIS. The Council process, which is based on stakeholder involvement and allows for public participation and public comment, has been the principal mechanism for public scoping in developing the proposed action for Amendment 2 and the related range of alternatives. The public has the opportunity to comment on the proposal during Council, subcommittee, and advisory body meetings.

In addition to the Council process, as noted in the introduction, the NOI also announced a 30-day period during which NMFS would accept written scoping comments, pursuant to agency guidance (NAO 216-6 §5.02d.2). In seeking scoping comments the NOI briefly described the alternatives adopted by the Council in March 2008 and described public scoping opportunities available through the Council process.³ Because the period for written scoping comments announced in the NOI coincided with the September Council meeting, in addition to submitting comments to NMFS, three of these comment letters were also submitted to the Council at their September 2008 meeting. They are available as supplemental public comment in the meeting materials for Agenda Item H.3.c.⁴

The next section describes the Council scoping process, during which the alternatives were developed. Section 4.2 summarizes the written scoping comments received by NMFS and Section 4.3 describes how these comments will be addressed in development of the SEIS. NMFS also independently considers the comments received in providing input on the development of the SEIS.

4.1 Scoping in the Council Process and Development of the Preferred Alternative

The meetings at which the proposal was discussed and the alternatives were developed are listed below. Briefing materials and meeting minutes are available on the Council web site. Links to referenced materials are provided below. Substantial work on developing the proposal has been carried out by two committees that advise the Council on HMS-related matters, the Highly Migratory Species Management

³ Because of uncertainty about the Council decision-making schedule at the time of NOI publication, it incorrectly stated that the Council would select a preliminary preferred alternative at their September 2008 meeting and choose a final preferred alternative at their March 2009 meeting. As discussed here, the schedule was revised with the intention that the Council will choose a preferred alternative at their April 2009 meeting.

⁴ see <http://www.pcouncil.org/bb/2008/bb0908.html#highly>

Team (HMSMT), composed of state and Federal agency resource managers, and the Highly Migratory Species Advisory Subpanel HMSAS), composed of representatives from different stakeholder groups.

- The current proposal for developing a management framework for a SSSL fishery began in April 2007 when the Council assigned the HMSMT the task of looking at a management framework that would allow the SSSL fishery without causing jeopardy under the ESA. (It should be noted that the Council initially began considering an FMP amendment to address the partial disapproval in 2004. However, action was deferred because of workload and funding constraints.) See http://www.pcouncil.org/minutes/2007/Final_April07_min.pdf, Agenda Item J.1 for Council minutes summarizing discussion on this topic.
- The HMSAS and HMSMT met August 14-17, 2007, and reviewed a draft Council white paper on the subject and began discussing concepts for a management framework. See http://www.pcouncil.org/hms/hmsinfo/HMSMT_AS_Aug_2007_minutes.pdf for minutes of this meeting.
- The Council again discussed development of the management framework at their September 9-14, 2007, meeting. They reviewed the staff white paper describing the background history for this proposal and issues related to its development. They then passed a motion identifying a proposed range of alternatives and proposed schedule for Council action. (Within the meeting materials Agenda Item F.2.d, Supplemental WDFW Motion, is the text of the motion. The staff white paper is Agenda Item F.2.a, Attachment 1.) They also directed the HMSMT and HMSAS to further develop the range of alternatives. See <http://www.pcouncil.org/bb/2007/bb0907.html#highly>, Agenda Item F.2 for meeting materials.
- The HMSMT and HMSAS met November 6-7, 2007, and discussed the alternatives, focusing on options for the limited entry program and the resulting fleet size. See http://www.pcouncil.org/hms/hmsinfo/HMSMT&AS_Nov_2007_minutes.pdf.
- The HMSMT met January 15-16, 2008, and began developing a report for the March 2008 Council meeting containing detailed recommendations for the alternatives, based on the elements contained in the Council's September 2007 motion. See http://www.pcouncil.org/hms/hmsinfo/HMSMT_Jan_2008_minutes.pdf for meeting minutes.
- Based on the HMSMT recommendations the Council passed a motion at their March 9-14, 2008, meeting adopting a more detailed specification of the alternatives. They also expressed their intention to choose a preferred alternative at their September 2008 meeting in the hope that review of the proposal by NMFS could occur concurrently with review of the WPFMC's action to change the effort limits applicable to their SSSL fishery. However, the requisite analyses could not be completed in time for the September 2008 meeting so the Council had to defer selection of a preferred alternative to a later date. See <http://www.pcouncil.org/bb/2008/bb0308.html#highly>, Agenda Item C.3 for meeting materials.
- The HMSAS and HMSMT met June 3-4, 2008, to review the alternatives adopted by the Council at the March 2008 meeting. In addition to identifying some clarifications in the description of the alternatives they developed recommendations on how to implement qualifying criteria for the different limited entry options.

See http://www.pcouncil.org/hms/hmsinfo/0806_HMSMT&AS_minutes.pdf, for meeting minutes.

- The HMSMT met July 31-August 1, 2008, to begin working on a report for the September 2008 Council meeting containing recommendations for refinements of and additions to the range of alternatives. They also discussed methods for implementing the qualification criteria options and presenting information about them to the Council.
See http://www.pcouncil.org/hms/hmsinfo/0807_HMSMT_minutes.pdf for meeting minutes.
- The Council reviewed a description of the alternatives and recommendations for refinements made by the HMSMT for further refinements at their September 7-12, 2008, meeting and adopted the HMSMT recommendations along with several additional measures. These are the alternatives described in Section 2 of this report. They also proposed selecting a preferred alternative at their April 2009 meeting. In advance of that meeting a preliminary draft SEIS will be prepared to support decision-making.
See <http://www.pcouncil.org/bb/2008/bb0908.html#highly>, Agenda Item H.3 for meeting materials.

4.2 Summary of Written Public Comments

During the 30-day period for written scoping comments NMFS received comments from 1,015 individuals opposing the action or aspects of it. Of these, 688 identical comments were submitted as part of a petition organized by the advocacy group seaturtle.org and 251 brief comments were included with a petition submitted by Oceana that had 1,596 signers. NMFS also received five more detailed comment letters from one individual and several environmental advocacy organizations. These organizations include Center for Biological Diversity, Defenders of Wildlife, Marine Fish Conservation Network, Monterey Bay Aquarium, National Coalition for Marine Conservation, Oceana, Ocean Conservancy, Tag-a-Giant Foundation, and Turtle Island Restoration Network. (Six of these organizations were co-signers on one of the letters.) These comments are briefly summarized below.

- Commenters voiced general opposition to authorizing a shallow-set longline fishery because they stated that the gear is indiscriminate and results in high levels of bycatch and take of protected species. Some comments stated that studies of the use of circle hooks have not addressed their effectiveness in all geographic areas or shown that they reduce bycatch of species other than sea turtles such as marine mammals, seabirds, and non-target finfish. One commenter recommended that because swordfish is a mercury-containing fish, such a fishery should not be authorized because it would affect public health.
- Commenters made a variety of recommendations about refocusing the proposed action on other activities or adding additional mitigation measures. A commenter said that an alternative focus would promote sustainable approaches to fishing. Related to this, the harpoon fishery for swordfish was identified as a gear type that should be promoted instead of longline. Commenters also recommended expanding the action to include a prohibition on landing swordfish on the west coast by harvesters fishing under a Hawaii longline limited access permit. Commenters also recommended that the proposed action include a management strategy coordinated with the Western Pacific Fishery Management Council. Related to this, another alternative proposed by commenters is to prohibit vessels fishing under Hawaii longline limited access permit from fishing in the area east of 150° W longitude and seaward of the west coast EEZ or landing swordfish on the west coast, both of which are currently permitted. Commenters recommended

adopting restrictions to reduce reliance on imported swordfish, which could be facilitated by consumer education.

- In relation to the potential for non-target finfish catch, commenters noted that NMFS has declared bigeye and yellowfin tuna stocks in the eastern Pacific subject to overfishing and other tuna stocks, such as North Pacific albacore, are subject to fishing pressure that may constitute overfishing. The proposed action would add to overall fishing mortality on these stocks. Commenters recommended that the Council and NMFS address overfishing rather than work on implementing this fishery. Commenters also mentioned sharks, Pacific bluefin tuna, striped marlin, and dorado as potential non-target catch vulnerable to overfishing.
- Commenters recommended that any evaluation of impacts should consider the cumulative effects of mortality from all fishery sources for all finfish stocks and protected species affected by the proposed action.
- Commenters said that the proposed action is inconsistent with current environmental laws, citing the Coastal Zone Management Act, the Endangered Species Act, the Marine Mammal Protection Act, the Migratory Bird Treaty Act, and California's Marine Life Protection Act.

4.3 Consideration of the Comments in Development of the SEIS

Written scoping comments received in response to the NOI fall into three general categories related to the key components of the EIS and related process: 1) the nature of the proposed action and its rationale, 2) the range of alternatives, and 3) the evaluation of impacts of the alternatives. The comments are discussed according to these categories.

The Council and NMFS have focused the proposed action on addressing the portion of the HMS FMP that was disapproved at the time it was originally implemented. As discussed in Section 2 of this report, the intent is to establish management measures and regulations that allow a shallow-set longline fishery while satisfying the requirements of applicable environmental law. This is in fact a prerequisite for NMFS to approve any FMP amendment proposed by the Council. Authorizing the fishery would provide benefits in terms of income and employment for participants and the provision of domestically-caught swordfish to west coast markets. The adverse impacts, including bycatch and incidental take of protected species, would be mitigated to the extent practicable and consistent with applicable law, such as those cited by some commenters. It should also be noted that the alternative of no action is proposed, under which the fishery would not be authorized. This allows a comparative evaluation of the beneficial and adverse effects of taking action, and the Council could make a recommendation of no action when choosing a preferred alternative.

Some of the recommendations for alternatives to the proposed action are outside Council authority, such as regulating the activity of Hawaii-permitted vessels on the high seas. Other proposals do not meet the objectives of this action, but could be considered separately. In particular, commenters have proposed expanding the harpoon fishery for swordfish. However, there is no prohibition in the HMS FMP or Federal regulations on this gear type. Therefore, there is no action that need be taken to authorize this fishery, the prosecution of a shallow-set longline fishery outside the EEZ is unlikely to conflict with a harpoon fishery occurring principally in areas closer to shore, and there are no obvious management or regulatory remedies that would support expansion of this fishery. The recommendation that the Council and NMFS address overfishing of HMS is not precluded by consideration of this action. The proposed fishery is likely to have a modest impact on stocks subject to overfishing, such as bigeye and yellowfin tuna. Effective management of these stocks depends to a large degree on work at the international level,

through regional fishery management organizations, because U.S. fisheries, and west coast fisheries in particular, represent a tiny fraction of the total catch made by all fishing nations. Since implementation of the HMS FMP the Council has become active in making recommendations for actions at the international level to deal with stock conservation issues. The Council can also continue to pursue coordination with the WPFMC across a range of issues while implementing this action.

Many of the comments reflect concern about the impacts of the proposed action. An EIS is the vehicle by which an agency explains what it intends to do, why it is doing it, proposes different ways of implementing the action (the alternatives), and discloses the environmental effects of the action. Therefore, considering the range of effects raised as concerns in the comments is a very important part of the EIS. The EIS will evaluate the full range of impacts of the alternatives on the range of organisms likely to be caught in the fishery, including finfish and protected species, with particular emphasis on loggerhead and leatherback sea turtles. These two species are listed as threatened and endangered, respectively, under the ESA and fishery-related mortality is of great concern in relation to their stock status. Commenters also noted marine mammals and seabird species that may be taken in the fishery and these impacts will be considered as well. Catches of target and non-target finfish will be evaluated in relation to what is known about the status of those stocks. Socioeconomic impacts, which are anticipated to be beneficial, will also be described. This will allow decision-makers to compare adverse and beneficial impacts.