

Dated: March 23, 2007.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 070226045-7045-01; I.D. 020107A]

RIN 0648-AT55

Fisheries in the Western Pacific; Western Pacific Pelagic Fisheries; Management Measures for Bigeye Tuna Pacific-wide and Yellowfin Tuna in the Western and Central Pacific Ocean

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement Amendment 14 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FMP). The amendment responds to the Secretary of Commerce's determination that overfishing is occurring on bigeye tuna (*Thunnus obesus*) Pacific-wide, and on yellowfin tuna (*Thunnus albacares*) in the western and central Pacific Ocean (WCPO). The measures in the amendment are designed to end overfishing of bigeye tuna Pacific-wide and yellowfin tuna in the WCPO, as required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 14 would establish Federal permitting and reporting requirements for all U.S. Hawaii-based small boat commercial pelagic fishermen. Internationally, Amendment 14 would establish for the Western Pacific Fishery Management Council (Council) an internal protocol related to its role in making recommendations to the Secretary on the management of pelagic fish stocks that are managed internationally, including its participation in U.S. delegations to meetings of regional fishery management organizations (RFMOs). This amendment also recommends that NMFS and the Department of State work through the RFMOs to immediately end overfishing

of bigeye tuna Pacific-wide and WCPO yellowfin tuna, focusing on fisheries with the greatest impact on Pacific bigeye tuna and WCPO yellowfin tuna, i.e., longline and purse seine fisheries.

DATES: Comments on the proposed rule must be received by May 14, 2007.

ADDRESSES: You may submit comments on the proposed rule, identified by *AT55Tuna*, to any of the following addresses:

- E-mail: *AT55Tuna@noaa.gov*.

Include in the subject line the following document identifier *AT55Tuna*.

Comments sent via email, including all attachments, must not exceed a file size of 10 megabytes.

- Federal e-Rulemaking portal: *www.regulations.gov*. Follow the instructions for submitting comments.
- Mail or Hand Delivery: William L. Robinson, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

An Environmental Assessment (EA) was prepared for this amendment. Copies of the Pelagics FMP and Amendment 14 (containing the EA) may be obtained from Kitty M. Simonds, Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to William L. Robinson (see **ADDRESSES**), or by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS PIR, 808-944-2271.

SUPPLEMENTARY INFORMATION: On December 15, 2004, NMFS notified the Western Pacific and Pacific Fishery Management Councils that overfishing was occurring on bigeye tuna Pacific-wide (69 FR 78397, December 30, 2004). On March 16, 2006, NMFS notified the Western Pacific Council that overfishing was occurring on western and central Pacific Ocean (WCPO) yellowfin tuna (71 FR 14837, March 24, 2006). As required by the Magnuson-Stevens Act, the Councils were requested to take appropriate action to end overfishing. Pelagics FMP Amendment 14 contains the Western Pacific Council's recommended actions to end overfishing for both stocks.

According to the guidelines for National Standard 1 of the Magnuson-Stevens Act (50 CFR 600.310), fishery stock status is assessed with respect to two status determination criteria, one of which is used to determine whether a stock is "overfished," and the second of

which is used to determine if the stock is subject to "overfishing." A stock is considered to be overfished if its biomass falls below the minimum stock size threshold (MSST). Overfishing means that fishing is occurring at a rate or level that jeopardizes the capacity of a stock or stock complex to produce maximum sustainable yield (MSY) on a continuing basis. When a stock is not in an overfished condition, the maximum fishing mortality threshold (MFMT) is equal to the fishing mortality associated with MSY (F_{MSY}). The latest stock assessments for bigeye tuna in the Pacific and WCPO yellowfin tuna have concluded that the biomass of neither stock is below their respective MSST. However, the assessments used as a basis for the overfishing determinations (conducted in 2003 and 2004 for Pacific bigeye tuna and 2005 and 2006 for WCPO yellowfin tuna) indicated that the then-current level of fishing mortality did exceed the stocks' respective MFMTs. Consequently, NMFS determined that overfishing was occurring on the Pacific-wide stock of bigeye tuna and on the WCPO stock of yellowfin tuna.

Bigeye and yellowfin tuna are highly migratory species, and occur in the waters of multiple nations and the high seas. Consequently, they are targeted by fishing fleets of several nations, including the United States of America (U.S.A.). Until recently, the majority of bigeye tuna in the Pacific Ocean was caught by longliners, primarily for the Japanese sashimi market. During the last 10 years, however, catches of bigeye tuna by purse seiners have increased considerably. Purse seine-caught bigeye tuna are taken primarily when purse seiners targeting skipjack and yellowfin tuna set their nets around fish aggregating devices (FADs). Smaller amounts are also taken by handline and troll vessels. Yellowfin tuna in the WCPO are caught primarily by purse seiners. WCPO longline, pole-and-line, handline and troll fisheries also catch substantial amounts of yellowfin tuna.

In 2004, estimated bigeye tuna catches by U.S. commercial fisheries under the Council's authority amounted to 5,163 mt, or 2.3 percent of the 2004 total Pacific-wide bigeye tuna catch. In 2004, estimated yellowfin tuna catches by U.S. commercial fisheries under the Council's authority amounted to 2,383 mt, or about 0.35 percent of the 2004 total Pacific-wide yellowfin tuna catch, and 0.58 percent of the yellowfin tuna caught in the WCPO. These figures indicate that the capacity for unilateral action by the U.S.A. to prevent or end overfishing is limited, as is the capacity

for any action taken by the Council to end overfishing on these fish stocks.

In response to concerns about the condition of the bigeye tuna stock in the Eastern Pacific Ocean, the Inter-American Tropical Tuna Commission (IATTC) adopted management measures, commencing with temporal closures of purse-seine fishing and bigeye tuna catch limits for longline vessels. Within the area of competence of the IATTC, the longline fleets of China, Japan, Korea, and Chinese Taipei were allocated specific catch limits. Other member nations of the IATTC were allocated bigeye tuna catch limits equivalent to their respective 2001 catches. The U.S. longline fleet-wide bigeye tuna limit was set at 150 mt, although this quota will increase to 500 mt in 2007. (The IATTC's June 2006 resolution allows for a quota of 500 mt, and the U.S. implementing regulations are still being reviewed for implementation in the near future.)

The U.S.A. is a Cooperating Non-member of the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). (Although the implementing legislation for U.S. membership in the WCPFC has been signed, the U.S.A. has not formally ratified the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention) or become a member of the Commission.) The WCPFC, established under the Convention, adopted conservation and management measures for WCPO yellowfin tuna and WCPO bigeye tuna in 2005 and 2006. The measures include national limits on bigeye tuna catches by longline fisheries in the Convention area (which overlaps with the area of competence of the IATTC), based on such members' average 2001–04 catches, or for China and the U.S.A., based on their 2004 catches. These limits will remain in effect through 2008. WCPFC cooperating non-members, and participating territories (together abbreviated as CCMs) that caught less than 2,000 mt by longlines in 2004, may take up to 2,000 mt each year from 2006–08.

For yellowfin tuna, for which the main source of fishing mortality in the WCPO is purse seine fishing, the WCPFC established measures for purse seiners within the Convention Area (in the area between 20° N and 20° S latitude). Starting in 2006, CCMs are required to take necessary measures to ensure purse seine effort levels do not exceed either 2004 levels, or the average of 2001 to 2004 levels, in waters under their national jurisdiction. Starting in

2007, CCMs must limit effort on the high seas by their purse seine vessels to those same baseline levels. Also beginning in 2007, CCMs must limit the fishing capacity of their fisheries other than longline and tropical purse seine fisheries to the same baseline levels. The adopted measures also require CCMs to develop management plans for the use of FADs in waters under national jurisdiction and on the high seas.

The 2004 overfishing determination for Pacific-wide bigeye tuna relied on assessments from two approaches: one assuming a single Pacific-wide stock (assessment completed in July 2003), and the other assuming two stocks, one in the WCPO, corresponding to the area of competence of the WCPFC (assessment completed in July 2004), and the other in the eastern Pacific Ocean (EPO), corresponding to the area of competence of the IATTC (assessment completed in May 2004). The overfishing determinations relied on assessment results from each of these approaches, but did not rely on any assumptions or conclusions about stock structure. The July 2004 assessment for the WCPO stock indicated a probability of at least 67 percent that the recent fishing mortality rate exceeded the fishing mortality rate associated with MSY, known as the Maximum Fishing Mortality Threshold (MFMT). The May 2004 assessment for the EPO stock indicated that in all scenarios considered, the recent fishing mortality rate exceeded the MFMT. The results of the 2003 assessment for the Pacific-wide stock were similar in that the recent fishing mortality rate exceeded the MFMT. The results from the 2003 and 2004 assessments showed that the level of fishing mortality F_{current} was at or above the fishing mortality at MSY (F_{MSY}), i.e., $F_{\text{current}}/F_{\text{MSY}} = 0.90\text{--}1.30$ for bigeye tuna Pacific-wide. The latest assessment for bigeye tuna in the WCPO estimated, in the base case model, that $F_{\text{current}}/F_{\text{MSY}} = 1.32$ (F_{current} was taken to be the 2001–04 average fishing mortality-at-age). The probability of F_{current} being greater than F_{MSY} was estimated to be 100 percent. The Pacific-wide stock was found not to be overfished, but could become so if levels of fishing mortality are not reduced.

In 2005, the Scientific Committee of the WCPFC reviewed a stock assessment for the WCPO stock of yellowfin tuna that indicated that the stock was likely subject to overfishing. The then-current rate of fishing mortality F_{current} was found to be likely in excess of the MFMT, with an $F_{\text{current}}/F_{\text{MSY}} = 1.0\text{--}2.33$. The latest assessment for yellowfin

tuna in the WCPO, conducted in 2006 estimated, in the base case model, that $F_{\text{current}}/F_{\text{MSY}} = 1.11$ (F_{current} was taken to be the 2001–04 average fishing mortality-at-age). The probability of F_{current} being greater than F_{MSY} was estimated to be 73 percent. The WCPO stock was found not to be overfished, but could become so if levels of fishing mortality are not reduced.

Because bigeye and yellowfin tuna are taken by handline and troll vessels, Pelagics FMP Amendment 14 contains measures to assess the impact of small boat fisheries in Hawaii on these species, as well as other pelagic fishes, in the WCPO. Specifically, the Council recommended that NMFS enhance the data collection for U.S. Hawaii-based small boat fishing through mandatory Federal permits and data-collection programs (logbooks) for commercial pelagic fisheries, and improved surveys and voluntary reporting for recreational pelagic fisheries.

Pelagics FMP Amendment 14 acknowledges that the Council recommended a control date of June 2, 2005, for entry into the small boat commercial pelagic fisheries in U.S. EEZ waters around Hawaii. On August 15, 2005, NMFS published a notice of this control date (70 FR 47781). The amendment also acknowledges that the Council recommended a control date of June 2, 2005, for entry into domestic longline and purse seine fisheries in U.S. EEZ waters in the western Pacific. On August 15, 2005, NMFS published a notice of this control date (70 FR 47782). These control dates were implemented to notify the public that future participation in these fisheries was not guaranteed if the Council and NMFS developed and implemented limited access programs for the fisheries. Establishment of these control dates does not, however, commit the Council or NMFS to any particular management regime or criteria for entry into these fisheries.

The international scope of the overfishing situation for bigeye tuna Pacific-wide and WCPO yellowfin tuna indicates that measures to meaningfully address the problem must be addressed through international institutions. Unilateral management action for Council-managed pelagic fisheries could help reduce the fishing mortality, but would be insufficient to end overfishing. Thus, international measures are a fundamental component of FMP Amendment 14 to end overfishing on these tuna stocks.

Internationally, Pelagics FMP Amendment 14 contains several proposed non-regulatory measures and recommendations, including the

establishment for the Council of an internal protocol related to its role in making recommendations to the Secretary on the management of pelagic fish stocks that are managed internationally (including steps the Council would take to monitor the status of internationally managed fish stocks, participate in U.S. delegations in meetings with RFMOs, and follow the activities of RFMOs). The Council also recommends that NMFS and the Department of State work through the RFMOs to immediately end overfishing of bigeye tuna Pacific-wide and WCPO yellowfin tuna, focusing on fisheries with the greatest impact on Pacific bigeye tuna and WCPO yellowfin tuna, i.e., longline and purse seine fisheries. Specific international recommendations include plans for reducing longline fishing capacity, reducing purse seine fishing capacity and restrictions on the use of FADs while purse seine fishing, establishment and gradual reduction of national quotas, and other measures.

This proposed rule is consistent with section 406 of the Magnuson-Stevens Reauthorization Act (MSRA, Public Law 109-479), which added a new subsection 304(i) to the MSA. Section 304(i) requires the Secretary to, among other things, in cooperation with the Secretary of State, immediately take appropriate action at the international level to end overfishing for fisheries that the Secretary has determined (a) to be overfished or approaching a condition of being overfished due to excessive international fishing pressure, and (b) for which there are no management measures to end overfishing under an international agreement to which the United States is a party. NMFS has made a determination that both of these conditions are present, and these measures are, therefore, proposed pursuant to subsection 304(i).

This proposed rule recognizes that Pacific bigeye tuna and WCPO yellowfin tuna are exploited in waters under US jurisdiction, waters under the jurisdiction of other nations, and on the high seas by foreign fishing fleets along with the U.S. fleet. U.S. fisheries account for only a small percentage of the Pacific bigeye and WCPO yellowfin tuna harvests. Thus, fishing mortality of these tuna stocks stems predominantly from non-U.S. fleets in the region, and any unilateral management action to end overfishing by the U.S.A. would have a proportionally small effect in terms of reducing fishing mortality and ending overfishing. The Council has developed recommendations in Amendment 14 for domestic regulations to address the relative impact of U.S. fishing vessels on the affected stocks.

Also in Amendment 14, the Council proposes to recommend, to NMFS and the Secretary of State, international actions to end overfishing in the fisheries. NMFS, in collaboration with the Councils and State Department, is working to end overfishing through the international bodies governing the conservation and management of Pacific bigeye and WCPO yellowfin tunas.

Existing Pelagics FMP measures for bigeye Pacific-wide and WCPO yellowfin tuna have been implemented to address the relative impact of U.S. fishing vessels within the meaning of MSA Section 304(i)(2)(A). These measures include limited access programs, mandatory data collection, scientific observers, vessel size limits and gear specifications, and a vessel monitoring system. The additional domestic measures, proposed in this rule, would establish permit and reporting requirements for Hawaii-based small-boat pelagic fisheries to improve the quantity and quality of information on the harvest of Pacific bigeye and WCPO yellowfin tunas.

Bigeye tuna is also a management unit species under the Pacific Fishery Management Council's Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The Pacific Council has worked with the Western Pacific Council to develop a response to the determination of overfishing on bigeye tuna Pacific-wide. Amendment 1 to the Pacific Council's HMS FMP is consistent with relevant elements of Pelagics FMP Amendment 14 to end overfishing of bigeye tuna.

Comments on this proposed rule must be received by May 14, 2007. Public comment is specifically sought regarding the proposed Federal data collection requirements for small boat commercial pelagic fishermen in Hawaii, including the necessity of, and possible alternative means for, the proposed data collection program in light of existing programs collecting data for the same fisheries. To be considered, comments must be received by close of business on May 14, 2007, not postmarked or otherwise transmitted by that date.

In addition to soliciting public comments on this proposed rule, NMFS is soliciting comments on proposed FMP Amendment 14 through April 16, 2007 (as stated in the Notice of Availability published on February 15, 2007, 72 FR 7385). Public comments on this proposed rule, if received by April 16, 2007, will also be considered in the approval/disapproval decision for Amendment 14. Comments received after that date will not be considered in

the approval/disapproval decision for Amendment 14, but will be considered for this proposed rule.

Classification

At this time, NMFS has not determined that Pelagics FMP Amendment 14, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The analysis follows:

The statutory basis for this rule is the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The objective of this rulemaking is to address overfishing of Pacific bigeye tuna, and yellowfin tunas in the WCPO by improving databases required for more accurate assessments. The rule will directly impact 1,646 vessels comprising the entire Hawaii-based commercial pelagic small boat fisheries. Therefore, a substantial number (100 percent) of the affected universe of small entities will be impacted by this rulemaking. The fishery includes troll, handline, offshore handline, and pole-and-line vessels. All vessels participating in this fishery are considered to be small entities under the current Small Business Administration definition of small fish-harvesting businesses (gross receipts not in excess of \$ 4.0 million). Therefore, there are no disproportionate impacts between small and large entities under this rule. In addition, there are no disproportionate economic impacts among vessels by gear, geographic area fished or home-ported, or vessel characteristics resulting from this rulemaking. The analysis of economic impacts relies on changes in net revenue as a proxy for profitability. Each permit is anticipated to cost approximately \$80 annually in the form of an administrative fee representing from 2% to less than 1% of annual per vessel revenues by gear type. Expected economic costs per vessel resulting from implementation of this rule is \$107, including opportunity cost (\$25 per hour x 1.09 hours) reflecting the individual annual burden hours of filling out and submitting the logbook. Using an average annual revenue per vessel of \$5,496, the cost to the vessel would be approximately 1.75% of annual revenue. Based on this small relative decrease in net revenues resulting from this rulemaking, NMFS has concluded that this action will not have a significant economic impact on a substantial number of small

entities for the purposes of the Regulatory Flexibility Act. Based on this determination, no initial regulatory flexibility analysis has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The public reporting burden for these requirements is estimated to be 30 min for a new permit application, and 20 min for completing a fishing logbook each day. Each estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether (a) this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, (b) the accuracy of the burden estimates, (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to William L. Robinson (see **ADDRESSES**), and email to David_Rostker@omb.eop.gov or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian natives, Northern Mariana Islands, Pacific Remote Island Areas, Reporting and recordkeeping requirements.

Dated: March 23, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as follows:

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

2. In § 665.12, add the definition of “Hawaii non-longline pelagic permit” to read as follows:

§ 665.12 Definitions.

* * * * *

Hawaii non-longline pelagic permit means the permit required by § 665.21 to use non-longline fishing gear to fish for Pacific pelagic management unit species in EEZ waters around Hawaii, the resulting catch of which either is, or is intended to be, sold, bartered, or traded.

* * * * *

3. In § 665.21, add a new paragraph (o) to read as follows:

§ 665.21 Permits.

* * * * *

(o) The owner of any vessel used to fish for Pacific pelagic management unit species using non-longline gear in EEZ waters around Hawaii, the resulting catch of which either is, or is intended to be, sold, bartered, or traded, must have a valid Hawaii non-longline pelagic permit issued for the vessel.

* * * * *

5. In § 665.22, add new paragraph (uu) to read as follows:

§ 665.22 Prohibitions.

* * * * *

(uu) Engage in fishing using non-longline gear for Pacific pelagic management unit species in EEZ waters around Hawaii without a valid Hawaii non-longline pelagic permit as required under § 665.21(o).

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[FR Doc. E7-5825 Filed 3-28-07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070316061-7061-01; I.D. 031907B]

RIN 0648-AV13

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to amend regulations supporting the

North Pacific Groundfish Observer Program (Observer Program). This action is necessary to revise requirements for the facilitation of observer data transmission and improve inseason support for observers. The proposed rule would promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs).

DATES: Written comments must be received by April 27, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by any of the following methods:

- E-mail: 0648-AV13-PR-OCS@noaa.gov. Include in the subject line the following identifier: “OCS proposed rule.” E-mail comments, with or without attachments, are limited to 5 megabytes;

- Mail: P.O. Box 21668, Juneau, AK 99802;

- Fax: (907) 586-7557;

- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK; or

- Webform at the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.

Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action may be obtained from the mailing address above or from the NMFS Alaska Region website at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:

Jason Anderson, 907-586-7228, or jason.anderson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) in the Exclusive Economic Zone under the FMPs. The North Pacific Fishery Management Council (Council) has prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council originally adopted and NMFS approved and implemented the