

of this section, and § 648.85(c)(3)(ii). A vessel issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), provided the vessel complies with the requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii), and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

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7. In § 648.62, paragraph (b)(1) is revised to read as follows.

§ 648.62 Northern Gulf of Maine (NGOM) scallop management area.

* * * * *

(b) * * *

(1) *NGOM annual hard TACs.* The annual hard TAC for the NGOM is 70,000 lb (31.8 mt) for the 2011, 2012, and 2013 fishing years. The NGOM TAC for the 2013 fishing year is a default allocation and is subject to change in a future framework adjustment.

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[FR Doc. 2011-10334 Filed 4-28-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.101102552-1232-01]

RIN 0648-BA35

Fisheries Off West Coast States; Highly Migratory Species Fisheries; Annual Catch Limits and Accountability Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement Amendment 2 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) which is currently under review by NMFS. The proposed rule would change the suite of management unit species, modify the process for revising numerical estimates of maximum sustainable yield and optimal

yield, and specify status determination criteria so that overfishing and overfished determinations can be made for all management unit species. The proposed rule is necessary to ensure that the HMS FMP is consistent with the objectives of National Standard 1 in the MSA. National Standard 1 mandates that "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry."

DATES: Comments must be received by May 31, 2011.

ADDRESSES: You may submit comments on this proposed rule, identified by 0648-BA35, the draft environmental assessment (EA), and the regulatory impact review (RIR) prepared for the proposed rule by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

- *Fax:* (562) 980-4047.

Instructions: All comments received are part of the public record and generally will be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter "N/A" in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only. Copies of the draft EA and RIR prepared for this proposed rule are available at <http://swr.nmfs.noaa.gov/> or may be obtained from Rodney R. McInnis (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Craig Heberer, Sustainable Fisheries Division, NMFS, 760-431-9440, ext. 303.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is also accessible at (<http://swr.nmfs.noaa.gov/>). An electronic copy of the current HMS FMP and accompanying appendices, including Amendment 1, are available on the Pacific Fishery Management

Council's Web site at <http://www.pcouncil.org/hms/hmsfmp.html>.

The HMS FMP was developed by the Pacific Fishery Management Council (Council) in response to the need to coordinate state, Federal, and international management of HMS stocks. The management unit in the FMP consists of several highly migratory species (tunas, billfish, and sharks) that occur within the West Coast (California, Oregon, and Washington) Exclusive Economic Zone (EEZ) and to a limited extent on adjacent high seas waters. The National Marine Fisheries Service (NMFS), on behalf of the U.S. Secretary of Commerce, partially approved the HMS FMP on February 4, 2004. The majority of HMS FMP implementing regulations became effective on April 7, 2004. Reporting and recordkeeping provisions became effective on February 10, 2005.

On June 7, 2007, NMFS approved Amendment 1 to the HMS FMP to incorporate recommended international measures to end overfishing of the Pacific stock of bigeye tuna (*Thunnus obesus*) in response to formal notification from NMFS that overfishing was occurring on this stock. Amendment 1 also served as a means to substantially reorganize the original combined FMP and Final Environmental Impact Statement, published in August 2003. NMFS implements the Council's recommended management measures through the Federal regulatory process.

In June 2010, the Council took final action to recommend Amendment 2 to the HMS FMP, which would address statutory requirements of the MSA National Standard Guidelines in regard to the establishment of annual catch limits (ACLs) and accountability measures (AMs). This proposed rule to implement Amendment 2 would reduce the number of HMS FMP Management Unit Species (MUS) listed in 50 CFR part 660 from 13 to 11. The Council has recommended that all 11 MUS should be deemed to fall under the international exemption for setting ACLs and AMs as outlined in the revised MSA National Standard 1 (NS1) Guidelines described in detail below, and therefore the Council has not proposed implementing regulations for ACLs and AMs. The proposed rule would also modify the process for revising and seeking NMFS approval for numerical estimates of maximum sustainable yield (MSY) and optimal yield (OY) and to specify status determination criteria (SDC) so that overfishing and overfished determinations can be made for all MUS stocks.

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 amended the MSA to include new requirements for establishing ACLs and AMs and other provisions regarding preventing and ending overfishing and rebuilding fisheries. In response to these changes in the MSA, in 2009 NMFS revised the NS1 Guidelines (50 CFR 600.310) (see: 74 FR 3178, January 16, 2009). The Guidelines are intended to help the regional fishery management councils and NMFS meet the objectives of NS1 by providing guidance on: Specifying MSY and OY; specifying SDC so that overfishing and overfished determinations can be made for stocks and stock complexes that are part of a fishery; preventing overfishing and achieving OY; incorporating of scientific and management uncertainty in control rules, adaptive management using ACLs and AMs; and rebuilding stocks and stock complexes. MSY is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological, environmental conditions and fishery technological characteristics (e.g., gear selectivity), and the distribution of catch among fleets. OY is the long-term average amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems. SDC are quantifiable factors or their proxies, which are used to determine if overfishing has occurred, or if the stock or stock complex is overfished. "Overfished" relates to biomass of a stock or stock complex, and "overfishing" pertains to a rate or level of removal of fish from a stock or stock complex.

The revisions to the NS1 Guidelines also dictate that fisheries undergoing overfishing have ACLs and AMs in place to end overfishing by 2010, and all fisheries to have ACLs and AMs in place to prevent or end overfishing by 2011. However, a stock or stock complex does not require an ACL or AM if it qualifies for any of several MSA-defined exceptions. The most important of these with respect to highly migratory species is the so-called "international exception" for stocks managed under an international agreement to which the United States is a party (§ 660.310(h)(2)(ii)). The international exception applies to stocks or stock complexes subject to management under an international agreement, which is defined as "any bilateral or multilateral treaty, convention, or agreement which

relates to fishing and to which the United States is a party." The management unit species in the HMS FMP occur in the convention area of, and are subject to the conservation and management authority of the Inter-American Tropical Tuna Commission; furthermore most of the management unit species also occur in the convention area of, and are subject to the conservation and management authority of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

In April 2009, the Council initiated scoping under the National Environmental Policy Act for Amendment 2 of the HMS FMP to address the revised NS 1 Guidelines. Initial scoping focused principally on classification of stocks in the FMP as either "in the fishery" and subject to management or as ecosystem component (EC) species and the application of the "international exception" to HMS FMP MUS. At their April 2010 meeting, the Council reviewed the Highly Migratory Species Management Team's (HMSMT) recommendations for the range of alternatives and adopted a set of alternatives for public review. These alternatives were made available to the public in the form of a draft environmental assessment included in the briefing materials for the Council's June 2010 meeting. At their June 2010 meeting, the Council took final action to adopt a preferred alternative. The public had the opportunity to comment on the proposal, including the issues to be addressed and the range of alternatives, during Council and advisory body meetings.

In regard to classification of stocks in the FMP, the preferred alternative would reclassify bigeye thresher shark (*Alopias superciliosus*) and pelagic thresher shark (*A. pelagicus*) as EC species thereby reducing the current suite of MUS from 13 to 11. Bigeye and pelagic thresher sharks were included originally in the HMS FMP as MUS due to concern over their low resiliency to exploitation. The recommendation to drop them as MUS under this proposed action is based in part on the minor levels of west coast commercial and recreational catch that have been reported for these species since the FMP was implemented. However, given the presence of these species off the West Coast, particularly during El Nino warming periods, it was deemed appropriate to categorize them as EC species. One of the essential purposes behind identifying EC species is to monitor these species over time,

periodically evaluate their status, and assess whether any management is needed under the FMP, in which case an EC species could be reclassified as MUS, which means they would be treated as "in the fishery." If Amendment 2 is approved, there would be eight EC species included in the FMP: the two thresher shark species (bigeye and pelagic) that are currently MUS, plus pelagic sting ray (*Dasyatis violacea*), wahoo (*Acanthocybium solandri*), common mola (*Mola mola*), escolar (*Lepidocybium flavobrunneum*), lancetfishes (*Alepisauridae*), and louvar (*Luvarus imperialis*). The international exception to setting ACLs and AMs as described at 50 CFR 660.310(h)(2)(ii) would be applied to all eight of the managed species under the preferred alternative.

In regard to the process for revising numerical estimates of management reference points, the methods for determining MSY (or proxies), OY, and SDC are currently described in the HMS FMP. Existing numerical estimates of these quantities (shown in FMP Table 4-3) would be retained. However, upon receipt of any new information based on the best available science, the Council may adjust the numerical estimates of MSY, OY, and SDC periodically under the Council's management measure process. The process would involve the Council's HMSMT identifying the numerical estimates within the draft HMS Stock Assessment and Fishery Evaluation (SAFE) document that is submitted in June with the Council's SSC HMS subcommittee and then making a recommendation on their suitability. The Council would then decide whether to adopt updated numerical estimates of MSY and OY, which would be submitted as recommendations for NMFS to review as part of the management measure review process. This provides the Secretary the opportunity to review revised MSY and OY estimates. In this process, the Council takes final action in November and then NMFS engages in rulemaking to implement the specifications of any management measures proposed by the Council. The revised estimates of MSY, OY, and SDC would also be published in the annual HMS SAFE document. If, however, a regional fisheries management organization formally adopts reference points for the purpose of regional management for any of the HMS FMP managed species, these would generally take precedence. The Council would engage in a review process similar to that described above before adopting them as appropriate for domestic

management purposes under the HMS FMP.

Classification

NMFS has determined that the proposed rule is consistent with the HMS FMP and preliminarily determined that this proposed rule is consistent with the MSA and other applicable laws.

An Initial Regulatory Impact Review was conducted to analyze the potential economic impacts and costs of each proposed alternative under consideration, including the preferred alternative addressed in this proposed rule.

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

Under the Regulatory Flexibility Act, 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 proposed action is not expected to have any direct or indirect socioeconomic impacts, because harvest limits and management measures influencing ex-vessel revenue and personal income are not established under the range of alternatives considered. Instead, the proposed action amends the HMS FMP to modify the suite of MUS and to revise the framework and process used by the Council and NMFS to prevent overfishing on MUS. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 25, 2011.

John Oliver,

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF THE WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.702, revise the definition of “Highly Migratory Species (HMS)” to read as follows:

§ 660.702 Definitions.

* * * * *

Highly Migratory Species (HMS) means species managed by the FMP, specifically:

Billfish/Swordfish:
striped marlin (*Tetrapturus audax*)
swordfish (*Xiphias gladius*)

Sharks:
common thresher shark (*Alopias vulpinus*)
shortfin mako or bonito shark (*Isurus oxyrinchus*)
blue shark (*Prionace glauca*)

Tunas:
north Pacific albacore (*Thunnus alalunga*)
yellowfin tuna (*Thunnus albacares*)
bigeye tuna (*Thunnus obesus*)
skipjack tuna (*Katsuwonus pelamis*)
northern bluefin tuna (*Thunnus orientalis*)

Other:
dorado or dolphinfish (*Coryphaena hippurus*)

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3. In § 660.709, revise paragraph (a) to read as follows:

§ 660.709 Annual specifications.

(a) *Procedure.* (1) In June of each year, the HMSMT will deliver a preliminary SAFE report to the Council for all HMS with any necessary recommendations for harvest guidelines, quotas or other management measures to protect HMS, including updated MSY and OY estimates based on the best available science. The Council’s HMS Science and Statistical Committee will review the estimates and makes a recommendation on their suitability for management. The Council will review these recommendations and decide whether to adopt updated numerical estimates of MSY and OY, which are then submitted as recommendations for NMFS to review as part of the management measures review process.

(2) In September of each year, the HMSMT will deliver a final SAFE report to the Council. The Council will adopt any necessary harvest guidelines, quotas or other management measures including updated MSY and OY estimates if any for public review.

(3) In November each year, the Council will take final action on any necessary harvest guidelines, quotas, or other management measures including updated MSY and OY estimates if any and make its recommendations to NMFS.

(4) Based on recommendations of the Council, the Regional Administrator will approve or disapprove any harvest guideline, quota, or other management measure including updated MSY and OY estimates after reviewing such recommendations to determine

compliance with the FMP, the Magnuson Act, and other applicable law. The Regional Administrator will implement through rulemaking any approved harvest guideline, quota, or other management measure adopted under this section.

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[FR Doc. 2011-10443 Filed 4-28-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 0808061074-81147-01]

RIN 0648-AW66

Fisheries in the Western Pacific; Pelagic Fisheries; Purse Seine Prohibited Areas Around American Samoa

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish 75-nautical mile (nm) purse seine fishing prohibited areas in the U.S. Exclusive Economic Zone (EEZ) around American Samoa. The proposed rule is intended to reduce catch competition between purse seine vessels and local trolling and longline fleets due to localized stock depletion by purse seine fishing, and minimize gear conflicts between the local longline fleet and domestic purse seine vessels. Currently, there are two 50 nm areas around American Samoa where large fishing vessels (50 ft and longer) are prohibited from fishing. The proposed rule would increase the distance from shore of these prohibited areas for U.S. purse seine vessels only.

DATES: Comments on the proposed rule must be received by June 13, 2011.

ADDRESSES: You may send a comment on this proposed rule, identified by 0648-AW66, to either of the following addresses:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>; or
 - *Mail:* Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.
- Instructions:* You must send comments to one of the two addresses