

**List of Subjects in 40 CFR Part 721**

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 24, 2007.

**Charles M. Auer,**

*Director, Office of Pollution Prevention and Toxics.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 224 and 660**

[Docket Number 070110003-7003-01; I.D. 112006A]

RIN 0648-AS89

**Fisheries Off West Coast States; Highly Migratory Species Fisheries**

**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 text in the regulations governing closures of the drift gillnet fishery in the Pacific Loggerhead Conservation Area during El Nino events under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The regulation is necessary to avoid jeopardizing loggerhead sea turtles, which are listed as threatened under the Endangered Species Act, by clarifying the time period in which the area is to be closed and the methods that NMFS will use to determine if an El Nino event is occurring or forecast to occur. NMFS also proposes to correct an inaccurate cross-reference in the regulations governing special requirements for fishing activities to protect endangered sea turtles under the HMS FMP.

**DATES:** Comments must be received by March 1, 2007.

**ADDRESSES:** You may submit comments on this notice, identified by I.D. 112006A, by any of the following methods:

- E-mail: [0648-AS89.SWR@noaa.gov](mailto:0648-AS89.SWR@noaa.gov). Include the I.D. number in the subject line of the message.
- Federal eRulemaking Portal: [www.regulations.gov](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.

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

**SUPPLEMENTARY INFORMATION:** On April 7, 2004, NMFS published a final rule to implement the HMS FMP (69 FR 18444) that included incorrect regulatory text in 50 CFR 660.713(c)(2) pertaining to the timing of a closure for the California/Oregon swordfish/thresher shark drift gillnet fishery during declared El Nino events and methods for determination and notification concerning an El Nino event. This proposed rule would amend that regulatory text.

The timing of the closure and methods for determining an El Nino event were published on December 16, 2003, as part of the Pacific loggerhead conservation area final rule (68 FR 69962) and codified at 50 CFR 223.206(d)(6)(ii) and (iii). The closure is necessary to avoid jeopardizing the continued existence of threatened loggerhead sea turtles. The final rule described the area of the closure, the time period in which the area is to be closed, the methods that NMFS will use to determine if an El Nino event is occurring or is going to occur, and how the Assistant Administrator will provide notification that an El Nino is occurring.

Less than 4 months after the correct language was codified, the HMS FMP final rule removed and reserved the regulation at 50 CFR 223.206(d)(6) and moved the text from that regulation to 50 CFR 660.713(c). Due to an oversight in drafting, § 223.206(d)(6)(iii), which detailed the process for the AA to make a determination that an El Nino is occurring or scheduled to occur, was not included in the HMS FMP final rule. Also, text at 660.713(c)(2)(ii) of the draft rule was mistakenly included in the HMS FMP final rule. This proposed rule would remove paragraph the text at 660.713(c)(2)(ii) and replace it with two paragraphs that are substantively identical to the original § 223.206(d)(6)(iii). The text of 223.206(d)(6)(iii) as originally intended with non-substantive revisions to the text for clarification. Furthermore, the corrections would make clear that any closure as a result of an El Nino event would occur from June 1 – August 31 only, as currently specified in 50 CFR 660.713(c)(2), rather than during the time periods of January 1 – January 15 and August 15 – August 31, as currently specified inconsistently in § 660.713(c)(2)(ii). NMFS also proposes to amend

regulatory text at 50 CFR 224.104(c) that describes special requirements for fishing activities to protect endangered sea turtles. The existing text refers to special prohibitions relating to sea turtles at § 223.206(d)(2)(iv). However, paragraph (d)(2)(iv) no longer exists in 50 CFR 223.206. The reference should be to § 223.206(d).

**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 Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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. Approximately 90 vessels were permitted under the HMS FMP to operate in the swordfish/thresher shark drift gillnet fishery off the U.S. West Coast in 2005. Of these 90 vessels, 42 actively fished in 2005. These vessels are considered small business entities and there should be no economic impact to them as a result of this action. The proposed action is a correction measure that will clarify conflicting regulatory instructions and provide U.S. fishermen with clear instructions on how to comply with Federal law. As described earlier, the corrections would make clear that any closure as a result of an El Nino event would occur from June 1 - August 31, as currently specified in 50 CFR 660.713(c)(2), rather than during the time periods of January 1 – January 15 and August 15 – August 31, as currently specified inconsistently in § (c)(2)(ii). The corrections would also include additional information describing how NOAA will determine whether an El Nino event is occurring and when El Nino conditions have ceased. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

**List of Subjects***50 CFR Part 224*

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

*50 CFR Part 660*

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 24, 2007.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 224 and 660 are proposed to be amended as follows:

**PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES**

1. The authority citation for part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

2. In § 224.104, paragraph (c) is revised to read as follows:

**§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.**

\* \* \* \* \*

(c) Special prohibitions relating to sea turtles are provided at § 223.206(d).

**PART 660—FISHERIES OFF THE WEST COAST STATES**

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

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

4. In § 660.713, paragraph (c)(2) is revised to read as follows:

**§ 660.713 Drift gillnet fishery.**

\* \* \* \* \*

(c)(2) *Pacific loggerhead conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. meridian from June 1 through August 31 during a forecasted, or occurring, El Nino event off the coast of southern California.

(i) *Notification of an El Nino event.* The Assistant Administrator will publish in the **Federal Register** a notification that an El Nino event is occurring, or is forecast to occur, off the coast of southern California and the requirement of a closure under this paragraph (c)(2). Furthermore, the Assistant Administrator will announce the requirement of such a closure by other methods as are necessary and appropriate to provide actual notice to the participants in the California/Oregon drift gillnet fishery.

(ii) *Determination of El Nino conditions.* The Assistant Administrator will rely on information developed by NOAA offices which monitor El Nino events, such as NOAA's Climate Prediction Center and the West Coast Office of NOAA's Coast Watch program, in order to determine whether an El Nino is forecasted or occurring for the coast of southern California. The Assistant Administrator will use the monthly sea surface temperature anomaly charts to determine whether

there are warmer than normal sea surface temperatures present off of southern California during the months prior to the closure month for years in which an El Nino event has been declared by the NOAA Climate Prediction Center. Specifically, the Assistant Administrator, will use sea surface temperature data from the third and second months prior to the month of the closure for determining whether El Nino conditions are present off of southern California.

(iii) *Reopening.* If, during a closure as described within this paragraph (c)(2), sea surface temperatures return to normal or below normal, the Assistant Administrator may publish a **Federal Register** notice announcing that El Nino conditions are no longer present off the coast of southern California and may terminate the closure prior to August 31.

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**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 600**

**RIN 0648-AU46**

[Docket No. 070118011-7011-01; I.D. 062906A]

**Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Observer Health and Safety**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would enhance the safety of observers and the efficiency of their deployment. The proposed rule would clarify prohibited actions regarding observers, reinforce that an observer may not be deployed or stay aboard an unsafe vessel, clarify when a fishing vessel is inadequate for observer deployment and how an owner or operator can resolve discrepancies, improve communications between observer programs and fishing vessel owners and operators, and provide for an alternate safety equipment examination of certain small fishing vessels. This proposed rule is necessary to maintain and improve the safety and effectiveness of fishing vessel observers in carrying out their duties as authorized by the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act) and the fishery management plans and regulations adopted under the Magnuson-Stevens Act.

**DATES:** Comments must be received by 5 p.m., EST, on March 1, 2007.

**ADDRESSES:** You may submit comments on this proposed rule or its Initial Regulatory Flexibility Analysis (IRFA), identified by 0648-AU46, by any of the following methods:

• E mail: [0648-AU46@noaa.gov](mailto:0648-AU46@noaa.gov). Include in the subject line of the e mail comment the following document identifier: "Observer Safety Measures." Comments sent via e mail, including all attachments, must not exceed a 10 megabyte file size.

• Federal e Rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• Mail: Lisa Desfosse, Team Leader, National Observer Program, National Marine Fisheries Service, 1315 East-West Highway, Rm 12525, Silver Spring, MD 20910

• Fax: 301-713-4137.

Copies of the Regulatory Impact Review prepared for this action may be obtained from Lisa Desfosse. Requests should indicate whether paper copies or electronic copies on CD-ROM are preferred. These documents are also available at the following website: <http://www.st.nmfs.noaa.gov/st4/nop/index.html>.

**FOR FURTHER INFORMATION CONTACT:** Lisa Desfosse at 301-713-2328.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Magnuson-Stevens Act, as amended; (16 U.S.C. 1801 *et seq.*), the Marine Mammal Protection Act, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the Atlantic Tunas Convention Act, as amended (ATCA; 16 U.S.C. 971 *et seq.*) authorize the Secretary of Commerce (Secretary) to station observers aboard commercial fishing vessels to collect scientific data required for fishery and protected species conservation and management, to monitor incidental mortality and serious injury of marine mammals and other species listed under the ESA, and to monitor compliance with existing Federal regulations. In addition, under the South Pacific Tuna Act of 1988 (SPTA, 16 U.S.C. 973 *et seq.*), NMFS may require observers in the South Pacific Tuna Fishery.

Regulations governing health and safety of observers are codified at 50 CFR 600.725 and 600.746. These