

## 10.0 PLAN ADMINISTRATION AND ENFORCEMENT

### 10.1 Monitoring of the Fisheries

The central thesis of this FMP is that foreign fishing vessels can compete significantly with island vessels in catches of the management unit species and tuna on local grounds or, in the more distant reaches of the FCZ, intercept fish before they can migrate into local waters fished by island fishermen. Skillman and Kamer (1985) found that abundance estimates (CPUE's) for blue and striped marlin for both the domestic longline and troll fisheries and the Japanese longline fishery vary from year-to-year in a consistent fashion. This indicates that both local and Japanese fishermen fish common stocks of blue and striped marlin in the FCZ. Skillman and Kamer also examined whether mortality of blue and striped marlin on foreign longline gear in the FCZ is associated with the abundance (CPUE estimates) of blue and striped marlin in local waters. They found that increases in Japanese longline effort in the FCZ of Hawaii and in adjacent waters is associated with decreases in the abundance of blue and striped marlin available to the local fisheries. Likewise, decreases in the amount of foreign longline fishing in the FCZ are associated with increases in the abundance (CPUE) of blue and striped marlin available to domestic fishermen (Section 5.5). Therefore, it can be expected that local fishermen should benefit from the exclusion of foreign longline fishing from the particular areas proposed (Section 3.1).

The principal parameters for monitoring each of the fisheries for pelagic species, both foreign and domestic, described in Section 6.0 are catch, effort, and subsequent derivation of catch rates or CPUE for each of the management unit species. This will allow extending the initial study of Skillman and Kamer by including all of the other species in the management unit in addition to blue and striped marlin and adding other gear types which take the management unit species. It should also eventually allow testing for whether or not the purse seine and baitboat fisheries can alter the abundance of the management unit species and tuna fished by island fishermen in local waters. Monitoring of domestic fisheries should also allow testing for signs of catch competition effects between and among the different island fisheries for pelagic species such as trollers, handline fishermen, local longliners, and the commercial and recreational fisheries.

#### 10.1.1 Foreign Longline Vessels

Under the FMP, foreign longline vessels would be required to file effort plans at least two months prior to fishing in the open areas of the FCZ. Foreign longline vessels permitted to fish in the FCZ must maintain a daily log of their fishing activities while in the FCZ. To the extent feasible, the logbook format should be as compatible as possible with logbooks presently in use by foreign longline vessels. The logbook format should record only the information which is essential for

monitoring the fishery for compliance with this plan. At the minimum, foreign longline vessels should log: (1) the day of fishing, (2) the position of the vessel (within 1° longitude and latitude) where the set is made, (3) the number of hooks per set, (4) the number and corresponding estimates of round weight (in Kg) of fish caught by species (whether retained or not), and (5) other information as may be judged necessary by the Regional Director of the NMFS for monitoring the fishery (Section 11.0, Foreign fisheries regulations).

#### 10.1.2 Foreign Baitboat (Pole-and-Line) and Purse Seine Vessels

For the time being, the U.S. State Department, in cooperation with the National Marine Fisheries Service (NMFS), shall request voluntary submission of catch and effort data for the management unit species taken incidentally to tuna fishing in the FCZ by these classes of vessels. If information on incidental catches and effort is not obtained within one year of the effective date of this FMP, the Council shall consider requesting the Secretary of Commerce to promulgate mandatory reporting requirements covering fishing effort and incidental catches made by the FCZ by these classes of vessels. If the Council is unsuccessful in getting catch and effort data from these vessels through voluntary means, then the Council may wish to prohibit fishing by these classes of vessels unless they first obtain a permit agreeing to log and report information regarding (1) the character of the vessel and type quantity of the fishing gear used, (2) areas of the FCZ (within 1° longitude and latitude) in which fishing was engaged in, (3) catch by species in numbers of fish or total weight thereof, and (4) other information deemed essential by the Regional Director of the NMFS for gauging the significance of by-catches of the management unit species relative to tuna catches made by these classes of vessels.

#### 10.1.3 Foreign Drift-Gillnet Fishing

The use of drift-gillnets in the FCZ by foreign fishing vessels is prohibited.

#### 10.1.4 Domestic Baitboat (Pole-and-Line) Vessels

Reports maintained by the Hawaii Division of Aquatic Resources (HDAR) summarizing daily catches made by skipjack tuna (aku) pole-and-line vessels are well suited for monitoring their catches of tuna and by-catches of the management unit species. These are no domestic pole-and-line tuna vessels in the other island areas under the jurisdiction of the Council.

#### 10.1.5 Domestic Purse Seine Vessels

The Council has agreed to seek information on incidental catches made by domestic tuna purse seiners in the FCZ through voluntary means. If adequate information on incidental catches (by species) and effort is not obtained within one year of the effective date of this FMP, then the Council shall consider ways for promulgating mandatory reporting of effort and catches made in the FCZ by domestic purse seine vessels.

#### 10.1.6 Domestic Drift-Gillnet Fishing

Fishing with drift-gillnets in the FCZ by domestic vessels is prohibited unless first authorized by an experimental fishing permit issued by the Regional Director of the NMFS (Section 11.0, Domestic Fisheries-Experimental Fishing Permit). Experimental permits will be issued on a case-by-case basis to allow controlled use of drift-gillnets in the FCZ by domestic vessels with a sporting requirement to determine the effort level, volume of catches, catch rates, and species composition of catches.

#### 10.1.7 Domestic Longline Fishing

The longstanding "Flagline Catch Report" (Appendix E), used by HDAR for monitoring catches made on longline gear, is on a fishing trip (day of landing) basis. This was adequate for the time when the length of fishing trips taken and the number of hooks (baskets) used by local longline vessels were fairly standard. At present, there is considerable variability in the number of hooks deployed by domestic longline vessels and in the number of days of actual fishing done. The Council, therefore, recommends that the HDAR discontinue using the "Flagline Catch Report" and instead substitute the "Fish Catch Report" for monitoring the catch of longline vessels. The "Fish Catch Report" (Appendix E) is on a per day of fishing basis. The Council also recommends that the HDAR require longline vessels to specify the number of hooks fished per set in the column of the "Fish Catch Report" which identifies the type of fishing gear used. Since many longline vessels now fish considerably further from Honolulu than in the past, the map which accompanies the "Fish Catch Report" form identifying the "statistical areas" fished around the Hawaiian islands can be expanded by the HDAR, with the assistance of the NMFS, to encompass the FCZ subdivided into a reasonable number of zones. An alternative to this would be to require vessels which fish beyond a certain boundary from shore to list the position of the vessel (within 1' longitude and latitude) where the sets are made.

The composition of the longline fleet in Hawaii is considerably different now from that of before 1980, when most of the vessels in the fleet were Hawaii-style sampans of wooden construction. Many boats from

Alaska and West Coast fisheries have relocated in Hawaii in recent years and some of them have entered the longline fishery on a part-time, seasonal basis. A discrepancy has been noted in the number of domestic vessels officially declared in the fishery (in State records) and those actually observed in the fishery (Section 6.13.1). In part, this is due to existing fishing license registration process. Many of the vessels which have entered the fishery on a part-time basis, declare themselves to be general purpose, or trolling, or handline vessels on the commercial fishing license forms. Longlining is a secondary occupation to these vessels, but their catches can be quite significant in the aggregate. Because of this problem, the official State tallies of catches made on longline gear probably underestimate actual catches by a considerable margin. Also, a considerable number of longline fishing trips taken are not reported at all, or are under reported, judging from the fairly large number of vessels which are engaged in the fishery at present and the substantial volume of tuna and billfish that are sold through major fish dealers and auctions in Hawaii (Western Pacific Regional Fishery Management Council, unpublished data). The Council recommends that the NMFS assist the HDAR to resolve these apparent problems.

There is a single domestic longliner operating in American Samoa. The number of fishing trips taken by this vessel and the vessels catch per trip are tracked by OMWR data collectors. There is no domestic longline fishing in Guam at present.

#### 10.1.8 Domestic Handline Fishing

There were no categories in the "Commercial Marine License" form specifically covering the ika-shibi and palu-ahi handline fisheries in Hawaii prior to 1985. Catch and effort information for these two handline fisheries (Sections 6.14 and 6.15), therefore, had to be extracted from the "deepsea handline" and "inshore handline" gear-type categories. Because the deepsea and inshore handline categories also included catches by fishing trip for the bottomfish and mackerel scad handline fisheries, it was cumbersome to separate out fishing trips and catches of large pelagic species made on handline gear. The Council, therefore, had recommended in the draft FMP (April 1985) that HDAR consider adding a separate category for the ika-shibi and palu-ahi fisheries in the licensing of commercial fishermen in Hawaii. The HDAR agreed with the Council's recommendation and established a separate category for these two tuna handline categories (Appendix E).

#### 10.1.9 Charter Sportfishing Vessels

Prior to 1985, charter boat catches could not be differentiated in the commercial "Fish Catch Reports" because they were lumped together with all other troll-caught fish. The charter fishing fleet in Hawaii catches a very significant share of the management unit species and is

large enough and important enough to warrant a distinct catch category in the Commercial Marine License procedures. In the draft FMP, the Council recommended that HDAR add a special charter fishing category in the Commercial Marine Licenses in order to include charter boat catches under a distinct category. The HDAR has done this and tracking of charter boat fishing trips and catches should be much easier and much more accurate now as a result of this change in the licensing procedure (Appendix E).

Currently, there are six vessels in American Samoa which hire out for sportfishing. Ten vessels operate as sportfishing charter boats in Guam at present for full-day or half-day charters. Estimates of fishing trips taken and catches made by sportfishing charter vessels in Guam and American Samoa are not available under a separate "charter vessel" category. Rather, they are lumped together with all troll caught fish. Charter fishing is not sufficiently large enough yet in Guam and American Samoa to warrant a distinct trolling category.

#### 10.1.10 Non-Charter Trolling

Trolling accounts for most of the landings of the management unit species in Guam and American Samoa, and in Hawaii. Since there is very limited handline fishing and no longline fishing for pelagic species in Guam, virtually all of the catches of the management unit species there are made by trolling. Likewise, most of the catches of the management unit species made by domestic fishermen in American Samoa are made by trolling since there are only a few domestic handline vessels and only a single longliner in American Samoa which target on tuna. Trolling is also the most important gear type contributing to catches of the management unit species in Hawaii, although longline catches and handline catches are also substantial.

The Western Pacific Fishery Information Network (WesPac FIN) is providing sufficient information for adequately monitoring the troll fisheries for the management unit species in Guam and in American Samoa. The situation in Hawaii, however, is quite different. The amount of trolling done in Hawaii is much higher than in Guam and American Samoa, and, as is the case in Guam and American Samoa, there is every conceivable blend of commercial, quasi-commercial, recreational, and subsistence troll fishing done in Hawaii. This situation makes it difficult to meaningfully characterize that part of the total troll catch which is reported to the State of Hawaii in the commercial "Fish Catch Reports" as being recreational in nature, as opposed to the part which is truly commercial. All it takes is a purchase of a \$25 "Commercial Marine License" for the right to sell fish in Hawaii. Hawaii's system of fish catch reporting also does not include catches made by non-licensed fishermen which probably exceed the catches made by licensed fishermen.

In order to establish a method for monitoring effort and catches made by non-licensed boat fishermen in Hawaii, the Council, the Honolulu

Laboratory of the NMFS, and the HDAR are jointly undertaking an investigation aimed at developing an appropriate sampling framework which would provide statistically reliable estimates of catches, effort, and catch rates (CPUE) for non-licensed boat fishermen in Hawaii. Present data collection procedures in Hawaii are insufficient for monitoring the fisheries for pelagic species because only fishermen who obtain a "Commercial Marine License" are required to submit monthly reports to HDAR that summarize each fishing day's activities for the month. However imperfect they may be, these data are the most comprehensive sources of information currently available on the fisheries in Hawaii which take the management unit species. Estimates of catches and effort derived from annual surveys of non-licensed fishermen in Hawaii, when added to the commercial catch reports, will make it possible to adequately monitor the fisheries for pelagic species in future years in Hawaii.

## 10.2 Annual Report

The Council shall establish and appoint members to a Pelagic Species Plan Monitoring Team (Team). The Team will have the responsibility for preparing an annual report to the Council on the various fisheries for pelagic species in each of the island areas served by the Council. The annual report will also gauge the effectiveness of the FMP in meeting its objectives. The composition of the Team will be decided by the Council. The Team will work closely with the NMFS, Coast Guard, State, and Territorial officials to ensure that data submission requirements and data collection programs are generating the data necessary for effectively monitoring the relevant fisheries and for determining whether different management measures might be necessary. The Honolulu Laboratory will be responsible for providing research and timely data analysis on the fisheries for pelagic species for use by the Monitoring Team. The Team will prepare an annual report on the fisheries for pelagic species by June 30th of each year on the status of the foreign and domestic fisheries covered by this FMP during the previous year. The Annual Report will be compared to reports for prior years to the extent data are available covering the FCZ and territorial waters around the main Hawaiian islands, the Northwestern Hawaiian Islands, Guam, and American Samoa. If the Monitoring Team determines that the data being provided through existing reports or surveys are not sufficient for the annual reports or for the five year review called for by the FMP, then the Plan Monitoring Team shall make a recommendation to the Council to require the submission of such reports under Federal or State or Territorial authority.

The annual report shall indicate:

1. Fishery Performance Data -
  - a. Total catch, by species, made by foreign and domestic vessels stratified by gear type, for each FCZ area;
  - b. Total landings and estimated ex-vessel revenues of landings, by species, and by fishery sector (gear type);

- c. Effort: Number of vessels, number of days fished and units of gear deployed by each fishery sector for each area of the FCZ; and
- d. Annual and quarterly catch rate or catch-per-unit-of-effort by species for each gear type, foreign and domestic, for each area of the FCZ.

2. Biological Data -

- a. Assessment of changes in the apparent abundance of the management unit species and species of tuna, assessment of changes in species composition and size composition of catches for each fishery (gear type), foreign and domestic, for each area of the FCZ, and other catch characteristics which might reflect changes in the stocks of the management unit species or fishing practices;
- b. Information regarding seasonal and area patterns of fishing by fishing sector, both foreign and domestic;
- c. Summary of most recent statistical trends and analyses of catch, fishing effort, and estimates of relative abundance (catch rate or catch-per-unit-of-effort, CPUE) for the management unit species among the domestic fisheries and the foreign fisheries by gear type; and
- d. The degree of the relationships among the different fisheries for pelagic species should be evaluated for each area of the FCZ to the extent that existing data sources allow.

3. Summary of Enforcement Activities and Problems -

- a. Sightings of foreign fishing and domestic purse seine fishing activities; and
- b. Record of violations of regulations.

4. Summary of Plan Administration -

- a. Foreign fishing fees collected;
- b. An appraisal of results of experimental fishing permits for domestic drift-gillnet fishing;
- c. Degree of observer coverage on foreign and domestic vessels; and
- d. Marine mammal and sea turtle interactions with fishing operations.

5. Summary of Research Results from the Past Year which are Relevant to the Management Unit Species and Species of Tuna.
6. Identification of Problems Requiring Council Consideration and Recommendation for Council Action -
  - a. Biological conditions of the stocks and trends;
  - b. Economic conditions of the fisheries and trends;
  - c. Enforcement problems;
  - d. Administrative problems; and
  - e. Consistency problems between Federal regulations and State and Territorial regulations or lack thereof.
7. Assessment of the Progress Made and Problems Encountered Regarding Quality of Data and Estimation Procedures for Monitoring Fishing Effort, Catches, and Catch Rates (CPUE) by Fisheries Sector.
8. Recommended Actions -
9. Appraisal of Impacts of Recommended Actions.

### 10.3 Five-Year Review

The PMP has been in effect for over six years with no change in its basic structure (retention and non-retention zone) and content (TALFF's and reserve components, Section 5.2). The regulations of the PMP require the Regional Director of the NMFS, as soon as practicable after September 1 of each year, to determine the amount of the management unit species which have been harvested to date by U.S. vessels in each island area served by the Council. If the Regional Director determines that the amounts of the management unit species actually harvested by U.S. vessels in a particular FCZ area is less than 80% of the expected domestic harvest for that species, the Regional Director shall then apportion the entire amount of the reserve for the applicable species to the TALFF in the applicable regulatory area established by the PMP. If domestic vessels harvest 80% or more of the expected domestic harvest for a particular management unit species, no reserve amounts shall be apportioned to TALFF for that species. The PMP provides no guidelines or criteria for changing the TALFF levels or the extent of the retention and non-retention zones. Also, the Council has never been briefed on the required annual adjustments in the reserve components or the procedures used by the NMFS in assessing the levels of annual harvests of the management unit species made by domestic fishermen in each of the island areas served by the Council.

Fortunately, there has been no occasion for testing the workings of the PMP since there has been no legal foreign longline fishing in the entire FCZ of



the Western Pacific Region since the PMP became effective on April 1, 1980. There will, however, probably be a need to eventually adjust the measures of this FMP if foreign longliners actually start fishing in the open areas of the FCZ beginning to approach historical levels, and if foreign fishing with pole-and-line vessels and foreign and domestic purse seine fishing expand in the FCZ of the Western Pacific Region. There might also be a need to alter the FMP if and when a regional tuna agreement is negotiated and signed by the U.S. and is ratified by the Senate, and if the domestic fisheries expand to such an extent that catch competition and gear conflicts become bigger problems than they are at present.

The factors most likely to trigger changes in the measures of the FMP are indexes of relative abundance of the management unit species. The consistency among the various CPUE (catch-per-unit-of-effort) statistics derived by Wetherall and Yong (1983) and Skillman and Kamer (1985) suggest that CPUE data are probably fairly good indicators of the abundance of the management unit species. Skillman and Kamer assembled fishing effort and catch statistics from a data base provided by the Division of Aquatic Resources of the Hawaii Department of Natural Resources covering the period from 1962 through 1978. All catch records for longline and trolling gear were used because these gears are primarily directed at tuna and the management unit species. In the handline fisheries, those records showing the catches of any of the management unit species and tunas were extracted and used in deriving CPUE statistics. Japanese longline catch rates were derived from catch and effort data provided by the Japanese Fishery Agency covering the same time period. CPUE statistics seem to be fairly good indicators of the abundance of the management unit species, and trends in their annual relative abundance (as measured by CPUE for both foreign and domestic gear types) can indicate problem areas and serve as triggering devices for making changes in the FMP.

While Skillman and Kamer showed that the abundance of blue and striped marlin in Hawaiian waters is directly related to foreign longline fishing, they did not test the proposition that domestic catches and catch rates for blue and striped marlin have in fact increased since foreign longliners stopped fishing in the FCZ in April of 1980. The Council thereby strongly recommends that Skillman and Kamer extend their study covering the most recent years so that the Council's case for area closures would be on a better footing.

#### 10.4 Costs of Monitoring

The costs involved in monitoring catch and effort in the fisheries for pelagic species and deriving CPUE for the management unit species are not large. Catch and effort data already exist which simply need to be manipulated. All of the necessary programming has already been done by Skillman and Kamer and their study simply has to be updated on an annual basis. The Pelagic Species Plan Monitoring Team will be responsible for preparing the Annual Reports and the Five-Year Review of the pelagic fisheries and the effectiveness of the FMP in meeting its objectives. The Team will need help in getting its assignments done on time. The Honolulu Laboratory of the NMFS and State and Territorial fisheries agencies have the type of resources which the Team would need to tap for its work. It is a matter of how much of the existing resources can and will

be made available to the Plan Monitoring Team by the Honolulu Laboratory and State and Territorial fisheries agencies. There will be no added costs involved in monitoring the fisheries for pelagic species. In-place mechanisms will be relied upon.

## 10.5 Enforcement

The U.S. Coast Guard and NMFS share primary enforcement responsibility under the MFCMA. Both agencies have multiple enforcement missions. The Coast Guard handles maritime law enforcement (including fisheries, pollution, maritime theft, smuggling, drugs), aids to navigation, merchant marine safety, and environmental protection. The NMFS responsibilities include enforcement of fisheries, marine mammals, and endangered species laws.

The principal surveillance effort for this FMP will be carried out by U.S. Coast Guard aircraft with occasional surface patrols in the waters around the Hawaiian Islands, American Samoa, Guam and the CNMI. Surface patrols will be concentrated in areas where there is anticipated high level of foreign fishing while aircraft patrols will cover the entire FCZ. At present, the Coast Guard conducts aircraft and vessel surveillance patrols of the FCZ for multiple missions (fisheries enforcement among them) according to the schedule shown in Table 10.1.

The schedule and budget shown in Table 10.1 will, by-and-large, remain fixed whether this draft FMP goes into effect or not. The emphasis of this plan, therefore, is not to find the "lowest enforcement cost" management program, but to find the "most enforcement cost-effective" program, given the objectives of the plan. As indicated previously, the PMP requires at-sea enforcement capability, including observers and vessel inspections. A Coast Guard high endurance cutter can travel 200-300 miles a day. In relatively clear weather with moderate seas, the vessel's radar will be reasonably certain to identify any fishing vessel within 15 miles of either side of the cutter. Thus, in a day, the cutter would provide good coverage of about 6,000-9,000 square miles per day at a cost of \$41,064. An aircraft patrol covers about 200 miles per hour, or 1,600 miles per 8-hour day. On a clear day with moderate seas, radar and visual sightings will be quite reliable within 30 miles to either side. Thus, in a day, an aircraft patrol can cover about 48,000 square miles at a cost of \$17,176. By example, the FCZ of Guam (about 48,000 square miles) can be effectively patrolled once by aircraft in about 8 hours at a cost of around \$17,000 or by a cutter in 6½ to 10 days at a cost in excess of a quarter of a million dollars. Area closures with aerial surveillance are clearly more cost-effective than quotas and non-retention zones with aerial and vessel patrols and observers for enforcement purposes. With an effort plan requirement, the effectiveness of aerial patrols should be increased since patrols can be targeted. Occasional surveillance of the whole FCZ is appropriate to monitor foreign fishing in open areas of the FCZ. The cost-effectiveness of enforcing the FMP is far greater than the enforcement cost-effectiveness of the PMP.

TABLE 10.1

AIRCRAFT AND VESSEL SURVEILLANCE OF THE FCZ  
OF THE WESTERN PACIFIC REGION

Aircraft Surveillance (C-130 at \$2,147 Per Hour)				
Area of the FCZ	Frequency of Coverage	Hours Per Patrol	Patrol Hours Per Year	Annual Costs
Main Hawaiian Islands	Bi-weekly	6.5	169	\$ 362,843
Northwestern Hawaiian Islands	Bi-weekly	14.5	377	809,419
Johnston Island	Monthly	9.5	114	244,758
Wake Island	Quarterly	19.5	78	167,466
Kingman/Palmyra Islands	Quarterly	11.0	44	94,468
Jarvis Island	Quarterly	11.0	44	94,468
Howland/Baker Islands	Quarterly	11.0	44	94,468
Guam/CMNI	Quarterly	43.5	174	373,578
American Samoa	Quarterly	33.5	134	287,698
<b>TOTAL AIRCRAFT SURVEILLANCE</b>			1,178 =====	\$2,529,166 =====

Vessel Surveillance			
Vessel Type	Patrol Days	Cost Per Day	Annual Costs
High Endurance Cutter	60 days per year	\$41,064	\$2,463,840
Buoy Tender	98 days per year	17,136	1,679,328
Patrol Boat	108 days per year	4,752	513,216
<b>TOTAL VESSEL SURVEILLANCE</b>	266 days per year =====		\$4,656,384 =====
<b>TOTAL SURVEILLANCE COSTS</b>			\$7,185,550 =====

In summary, the FMP will not add to current costs incurred by NMFS and the U.S. Coast Guard for administering and enforcing the PMP. The FMP provides a basis for re-deployment of staff and facilities to focus on monitoring possible violations in areas recommended to be closed to foreign longlining, rather than monitoring all fishing and trying to control foreign catch. This should result in a much more effective and efficient enforcement program.

## 11.0 REGULATIONS

### FOREIGN FISHERIES

#### 611.81 PACIFIC BILLFISH, OCEANIC SHARKS, WAHOO AND MAHIMAHI FISHERY

##### (a) Purpose

- (1) General -- This section regulates all foreign fishing conducted under a Governing International Fishery Agreement which involves the catching of any species of billfish, oceanic shark, wahoo, or mahimahi (dolphin) in the fishery conservation zone (FCZ) of the United States in the Pacific Ocean, excluding the portion of the FCZ seaward of Alaska.
- (2) Definitions -- For the purposes of this section, the following terms have the following meanings:
  - (i) Billfish means broadbill swordfish (Xiphias gladius), blue marlin (Makaira nigricans), black marlin (Makaira indica), striped marlin (Tetrapturus audax), sailfish (Istiophorus platypterus), and shortbill spearfish (Tetrapturus angustirostris);
  - (ii) Closed area means that area of the FCZ in which foreign longline vessels subject to this section are prohibited from fishing;
  - (iii) Drift-gillnet means a floating rectangular net with one or more layers of mesh which is set vertically in the water;
  - (iv) Mahimahi means "dolphin fish" (Coryphaena hippurus and Coryphaena equiselis);
  - (v) Non-retention zone means that area of the FCZ in which all billfish, oceanic sharks, wahoo, mahimahi and other fish caught by foreign longline vessels in the course of fishing under this section shall be returned to the sea in accordance with the requirements of paragraph (j)(5) of this section;
  - (vi) Oceanic sharks means sharks of the families Carcharhinidae, Alopiidae, Sphyrnidae, and Lamnidae;
  - (vii) Retention zone means that area of the FCZ in which foreign longline vessels subject to this section may retain

billfish, oceanic sharks, wahoo and mahimahi to the extent that retention is authorized by this section; and

(viii) Wahoo means fish of the species Acanthocybium solanderi.

(b) Permits

All foreign vessels which intend to fish or can reasonably be expected to take billfish, oceanic sharks, wahoo, mahimahi and other non-tuna species under this section must have a permit issued under Section 611.3.

(c) Vessels and Gear Identification

All permitted vessels subject to this section shall comply with the vessel and gear identification requirements of Section 611.5.

(d) Observers

Permitted vessels subject to this section shall comply with the observer requirements of Section 611.8.

(e) Prohibited Species

The retention of non-tuna catches by foreign vesesl is prohibited in the absence of a permit to catch and retain them. Therefore, non-tuna species cannot be caught and retained in the FCZ by a vessel without a permit authorizing their catch and retention, and it is a rebuttable presumption that any prohibited species found on board these vessels within the FCZ were caught and retained in violation of the Magnuson Act.

(f) Vessel Reporting

(1) The vessel reports required by this paragraph (f) are in lieu of the vessel reporting requirements of 611.4 (c), (d), and (e). The owner or operator of each foreign longline vessel subject to this section shall report vessel activities as follows:

(i) Vessel reports are required for each vessel. The vessel reports required by this paragraph (f) shall be consolidated, if possible, and submitted for groups of vessels (on a vessel-by-vessel basis) by a designated representative for a foreign nation's longline vessels.

- (ii) All reports must be received at least seven days prior to the entering and departing of the fishing area and the beginning and ceasing of the fishing activities. The report shall include the following:
- (A) The vessel name; international radio call sign; the action code ENTER for a vessel entering the fishing area: the month, date, time and latitude and longitude of the vessel that will enter the fishing area.
  - (B) The action code DEPART for the vessel departing from the fishing area and the month, date, time and latitude and longitude of the vessel that will depart the fishing area.
  - (C) The date and time each vessel intends to Begin fishing in the fishing area (action code BEGIN), the fishing area and the latitude and longitude where the vessel intends to begin fishing.
  - (D) The date and time each vessel intends to Cease fishing in the fishing area (action code CEASE), the fishing area and the latitude and longitude where the vessel intends to cease fishing.
  - (E) The fishing areas are listed in Appendix C, Paragraph D, of Subpart A.
- (2) The Vessel Reports need not be submitted on temporary departures from the fishing area for port calls inside the seaward boundary of one of the coastal states.
- (3) The operator of a foreign fishing vessel will be in violation of Paragraph (f)(ii) of this section if the foreign fishing vessel does not pass within five nautical miles of the position given in the report within four hours of the time given in the report.
- (4) The report required by this section shall use the message identifier "VESREP" to indicate it is a required vessel report in the Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery.
- (5) Example of foreign longline vessel activities are as follows:
- (i) Able Steamship Company, designated representative for Bolivian Longliners, wishes to report the vessel CABLE (EXRC) will enter the fishing area of Hawaii and Midway (Area code 81) November 7 at 1700 (GMT) at position 2400N,, 17705W. The F/V CABLE (EXRC) will BEGIN fishing November 8

at 1500 (GMT) at position 2330N, 17535W. F/V CABLE (EXRC) will CEASE fishing November 21 at 1000 (GMT) at position 2832N, 17235W. F/V CABLE will DEPART the fishing area November 22 at 1600 (GMT) at position 2932N, 17225W.

F/V DABBLE (EQU) will ENTER the fishing area of America Samoa (Area code 83) November 14 1600 (GMT) at position 1102S, 17344W. The F/V DABBLE (EQU) will BEGIN fishing November 14 1800 (GMT) at position 1055N, 17320W. F/V DABBLE (EQU) will CEASE fishing January 14, 1987 1400 (GMT) at position 1102S, 16826W. F/V DABBLE will DEPART from the fishing area January 18, 1987 1630 (GMT) at position 1001S, 16831W.

- (ii) The required message must be delivered to the appropriate Coast Guard Commander in the following format:

FROM: Able Steamship Company

TO: Commander, 14th Coast Guard District, Honolulu,  
Hawaii (Telex 392-2401)

VESREP

FFV/CABLE/EXRC/

ENTER / 11/07/1700/2400N/17705W/81  
BEGIN / 11/08/1500/2330N/17535W/  
CEASE / 11/21/1000/2832N/17235W/  
DEPART/ 11/22/1600/2932N/17225W/

FFV/DABBLE/EQU/

ENTER / 11/14/1600/1102S/17344W/83  
BEGIN / 11/14/1800/1055S/17320W/  
CEASE / 1/14/87/1400/1102S/16826W/  
DEPART/ 1/18/87/1630/1001S/16831W/

- (g) Collection and Reporting of Data

In lieu of the requirement of Section 611.4, (f)(2) and (f)(4), and Section 611.9(d) and (e), the following data collection and reporting requirements shall apply:



(1) Daily Cumulative Catch Log. All permitted vessels fishing under this section shall maintain a daily cumulative catch log in English. This log shall contain on a daily and cumulative basis data on all billfish, oceanic shark, wahoo, mahimahi and other fish caught in the FCZ during the permit period. Logbooks will be provided by the National Marine Fisheries Service and shall be maintained aboard the vessel during the duration of the permit period. Logbooks shall be mailed to the Regional Director not later than 30 days following the completion of fishing or shall be hand delivered to the National Marine Fisheries Service observer on board the vessel upon his request. Information for each fishing area shall be maintained on a separate page of the log. The log shall contain the following information:

- (i) Name and international radio call sign of the vessel;
- (ii) Permit number;
- (iii) Fishing area and area code number where fishing is conducted (see paragraph D of Appendix C to Subpart A);
- (iv) Date;
- (v) Noon-day position of vessel, within one-tenth of 1' latitude and longitude;
- (vi) Number and round weight (in kilograms) of each species (by species codes found in Appendix D to Subpart A) of billfish, oceanic sharks, wahoo, and mahimahi caught and retained each day and cumulatively;
- (vii) Number of each species (by species codes) of billfish, oceanic shark, wahoo, mahimahi and other fish caught and released each day and cumulatively;
- (viii) Number of fish of each species released alive, each day and cumulative; and
- (ix) Number of hooks set by type of bait or any other measure of fishing effort which may be specified by the Regional Director.

(2) Quarterly Catch Report. Each foreign nation whose permitted vessels fish under this section shall submit, through the designated representative, a report for each calendar quarter containing, on a vessel-by-vessel basis, the following information:

- (1) Name and international radio call sign of the vessel;

- (ii) Permit number;
- (iii) Month and day of the last day of the period covered by the report;
- (iv) For each fishing area where fishing occurred during the reporting period;
  - (A) Number and round weight of each allocated species caught and retained to the nearest tenth of a metric ton (0.1 m.t.);
  - (B) Number of each species of billfish, oceanic shark, wahoo, mahimahi, and other fish caught and released during the reporting period;
  - (C) Number of fish of each species released alive;
  - (D) Total number of hooks set, by type of bait or any other measure of fishing effort which may be specified by the Regional Director;
  - (E) Number of days fished in the FCZ during the reporting period; and
  - (F) Average number of hooks set per day fished, by type of bait or any other measure of fishing effort which may be specified by the Regional Director.
- (3) Report of Marine Mammal and Sea Turtle Incidental Catch. Each foreign nation whose permitted vessels fish under this section shall submit, through the designated representative, a report of marine mammal and sea turtle incidental catch in a manner required by Section 611.4 (f)(4) within 60 days of leaving the FCZ in lieu of weekly reports. (Permits issued under this section do not authorize the take and retention of marine mammals and sea turtles in the FCZ).
- (4) Submission of Reports. The quarterly reports required by this paragraph (f)(2) shall be submitted within 60 days of the end of each calendar quarter to:

Regional Director, Southwest Region  
National Marine Fisheries Service  
300 South Ferry Street  
Terminal Island, California 90731

Telephone: (213) 514-6196.

- (5) Reporting of Incidental Catch by Non-permitted Tuna Harvesting Vessels. The U.S. State Department, in cooperation with the National marine Fisheries Service, shall request voluntary submission of catch data for billfish, oceanic sharks, wahoo, and mahimahi taken incidentally to tuna fishing in the FCZ by these classes of vessels. If information on incidental catches is not obtained within one year of the effective date of this section, the National Marine Fisheries Service, in cooperation with the State Department, shall consider the promulgation of mandatory reporting requirements for incidental catches in the FCZ by these classes of vessels.

(h) Management Area Groups

For the purposes of this section, the FCZ of the Pacific Ocean (excluding the FCZ seaward of Alaska) is divided into two management area groups comprised as follows:

- (1) FMP Management Area Group. The areas of the FCZ off the coast of the Hawaiian and Midway Islands, Guam, American Samoa and U.S. possessions are governed by the provisions of the Fishery Management Plan for Billfish and Associated Species of the Western Pacific Region (FMP) and are designated the FMP Management Area Group.
- (2) PMP Management Area Group. The areas of the FCZ off the coast of the U.S. West Coast and the Commonwealth of the Northern Mariana Islands are governed by the provisions of the Preliminary Fishery Management Plan for Billfish, Oceanic Sharks, Wahoo and Mahimahi in the Pacific Ocean (PMP) and are designed the PMP Management Area Group.

(i) Authorized Fishery - FMP Management Area Group (Hawaii and Midway Islands, Guam, American Samoa, U.S. Possessions)

- (A) General. Foreign vessels subject to this section are authorized to fish in the FCZ of Hawaii and Midway Islands, Guam, American Samoa and the U.S. possessions subject to the requirements of this paragraph (i).
- (B) Zones. The FMP Management Area Group is comprised of the following closed areas and retention zones (each of which is measured from the baselines used to measure the U.S. territorial sea) as described in Table 1:

TABLE 1

Management Area	Closed Area	Retention Zone
Hawaiian Islands	<ol style="list-style-type: none"> <li>1) within 150 nautical miles miles of the Main Hawaiian Islands (islands east of 161°W longitude); and</li> <li>2) within 100 nautical miles of the Northwestern Hawaiian Islands including Midway (islands west of 161°W longitude).</li> </ol>	<ol style="list-style-type: none"> <li>1) between 150 and 200 nautical miles of the Main Hawaiian Islands; and</li> <li>2) between 100 and 200 nautical miles of the Northwestern Hawaiian Islands.</li> </ol>
Guam <sup>1</sup>	within 150 nautical miles	between 150 and 200 nautical miles.
American Samoa	<ol style="list-style-type: none"> <li>1) within a rectangle around around the Tutuila and Manua islands of American Samoa bounded by 14° to 15°S latitude and 168° to 171°W longitude; and</li> <li>2) within a one degree (1°) square surrounding Swain's Island bounded by 10°33' to 11°33'S latitude and 170°35' to 171°35'W longitude.</li> </ol>	<ol style="list-style-type: none"> <li>1) areas of the FCZ outside the rectangle bounded by 14° to 15°S latitude and 168° to 171°W longitude; and</li> <li>2) areas of the FCZ outside the one degree (1°) square surrounding Swain's Island.</li> </ol>
U.S. Possessions (except Midway Islands)	within 12 nautical miles	between 12 and 200 nautical miles.

<sup>1</sup> The northern boundary of the FCZ off the coast of Guam shall extend to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands.

- (3) Effort Plans. Foreign longline vessels which desire to fish in the FMP Management Area Group are required to file effort plans two (2) months prior to entering the retention zones of the FCZ for fishing purposes. Effort plans shall indicate the dates when fishing is expected to begin and cease and shall specify the areas of the FCZ where the vessels intend to operate. Effort plans shall be submitted to:

National Marine Fisheries Service, Administrator  
Western Pacific Program Office  
2570 Dole Street  
Honolulu, Hawaii, USA 96822

Telephone: (808) 955-8831.

- (4) Catch and Effort. There shall be no limit on the amount of fishing effort or the catch of billfish, oceanic sharks, mahimahi and wahoo made by foreign longline vessel in the retention zones described in Table 1 of paragraph (i) of this section.
- (5) Closed Areas. Foreign longline vessel subject to this section are prohibited from fishing within the closed areas described in Table 1 of paragraph (i) of this section.
- (6) Drift-gillnets. The use of drift-gillnets in the FMP Management Area Group is prohibited.

(j) Authorized Fishery - PMP Management Area Group (Northern Mariana Islands, U.S. West Coast)

- (i) General. Foreign longline vessels subject to this section are authorized to fish in the FCZ of the Northern Mariana Islands and the West Coast beyond 12 miles from the baseline used to measure the U.S. territorial sea, subject to the requirements of this paragraph (j). Only foreign longline vessel are eligible for permits to fish in the PMP Management Area Group.
- (2) Zones. The PMP Management Area Group is comprised of the following closed areas, retention and non-retention zones (each of which is measured from the baselines used to measure the U.S. territorial sea) as described in Table 2:
- (3) Total Allowable Level of Foreign Fishing (TALFF), Joint Venture Processing (JVP), National Allocations, and Reserves.
- (i) TALFF, Reserve, and JVP Amounts. The TALFFs, amounts of fish held in reserve, and amounts of JVP are published in the Federal Register. Current TALFFs, reserves, and JVPs are also available from the Regional Director.

TABLE 2

Management Area	Non-retention Zone	Retention Zone
West Coast	Between 12 and 100 nautical miles	Beyond 100 nautical miles
Northern <sup>1</sup> Mariana Islands	Between 12 and 50 nautical miles from Rota, Tinian, Aguijan, and Saipan	Beyond 50 nautical miles from Rota, Tinian, Aguijan, and Saipan; and  Beyond 12 nautical miles of the remaining islands of the Northern Mariana Islands.
Closed areas	Foreign longline vessels subject to this paragraph (j) are prohibited from fishing within 12 nautical miles of the U.S. West Coast and the Northern Mariana Islands.	

<sup>1</sup> The southern boundary of the FCZ off the coast of the Northern Mariana Islands shall extend to those points which are equidistant between Guam and the island of Rota.

(ii) TALFF and National Allocations.

- (A) The total amount of each species of billfish, oceanic sharks, wahoo, and mahimahi which may be caught and retained in each area of the PMP Management Area Group by foreign vessels subject to this paragraph (j) is limited to the TALFF for each applicable area, and to the amount of the applicable national allocation.
- (B) No foreign vessels subject to this paragraph (j) may catch and retain billfish, oceanic sharks, wahoo and mahimahi within the non-retention zones set out in Table 2 of paragraph (j) of this section.

(iii) (A) Determination.

- (1) As soon as practicable after September 1 of each year, and upon receipt of a written request from a foreign nation, the Regional Director, Southwest Region, shall determine, for each species for which a reserve has been established, the amount of fish which has been harvested to date by U.S. vessels in each applicable area.
- (2) If the Regional Director determines that the amount of fish of a species harvested by vessels of the United States in an area is less than 80% of the expected domestic harvest for that species in that area, the Regional Director shall apportion to TALFF the entire amount of the reserve for the applicable species in the applicable area. No reserve amounts shall be apportioned to TALFF if domestic vessels have harvested 80% or more of the expected domestic harvest for that species in the applicable area by the date of this determination.

- (B) Notice. The Assistant Administrator for Fisheries, NOAA, shall publish in the Federal Register a notice of each determination made under paragraph (j)(3)(iii)(A)(1) of this section.

(4) Cancellation of Authority to Retain.

- (i) The Authority of a foreign longline vessel to retain an applicable species is cancelled:
  - (A) When the national allocation for the applicable species is reached; or
  - (B) At the date and time specified in the notification issued by the Assistant Administrator under paragraph (j)(4)(ii) of this section.
- (ii) The Assistant Administrator shall determine, on the basis of the information specified in Section 611.13, when the TALFF or optimum yield (OY) of a billfish species, oceanic sharks, wahoo, or mahimahi in an area of the PMP Management Area Group will be reached. At least forty-eight hours before the applicable TALFF or OY will be reached, the Assistant Administrator shall notify both the affected foreign nation(s) and the designated representative for any affected fishing vessel that authority to retain the applicable species is cancelled.

- (iii) Any cancellation under this paragraph (j)(4) shall remain in effect until a new or increased allocation becomes available.
- (iv) The closure provisions of Section 611.13 do not apply to foreign longline vessels fishing subject to this paragraph (j).

(5) Prohibited Species.

- (i) General. The following are prohibited species under this paragraph (j):
  - (A) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no national allocation;
  - (B) All billfish, oceanic sharks, wahoo and mahimahi caught in excess of an applicable OY, TALFF, or national allocation; and
  - (C) All billfish, oceanic sharks, wahoo, and mahimahi caught in a non-retention zone. (See Table 2 of paragraph (j) of this section).
- (ii) Treatment. All prohibited species shall be treated in accordance with Section 611.11.
- (iii) Additional Requirements for Billfish and Oceanic Sharks. Unless otherwise specifically instructed by a U.S. observer or authorized officer, all prohibited billfish and oceanic sharks must be released by cutting the line (or by other appropriate means) without removing the fish from the water.
- (iv) Rebuttal of Presumption. Foreign vessels fishing subject to this paragraph (j) may rebut the presumption of Section 611.11(d) by:
  - (A) Storing all prohibited species caught outside the FCZ in a separate part of the vessel hold which can be sealed, and arranging inspection and sealing of the vessel hold by U.S. authorities before commencing fishing in the FCZ or in non-retention zones; or
  - (B) Other reasonable means which may be authorized by the Regional Director if, in consultation with the U.S. Coast Guard, the Regional Director, determines that special circumstances warrant alternative arrangements.



(v) Procedures for Hold Sealing.

- (A) Inspection and sealing of a foreign vessel's hold may be arranged by contacting the Regional Director (Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822, telephone: (808) 955-8831) at least 48 hours in advance of the date for which inspection is requested.
- (B) Ports at which such inspections may be made are Honolulu and Kahului, Hawaii; Agana, Guam; and San Diego, California.
- (C) Additional ports for hold inspections may be arranged with the Regional Director.

(vi) Other Requirements. The designation of ports for hold inspection and sealing does not modify any port entry arrangements or requirements (if any) of Governing International Fishery Agreements or the notification requirements of any other laws or regulations of the United States.

**DOMESTIC FISHERIES**

**SUBPART A - GENERAL PROVISIONS**

- Sec. 685.1 Purpose and Scope
- 685.2 Definitions
- 685.3 Relation to State laws
- 685.4 Reporting
- 685.5 General Prohibitions
- 685.6 Enforcement
- 685.7 Penalties
- 685.8 Experimental Fishing Permits

**SUBPART B - MANAGEMENT MEASURES**

- Sec. 685.21 Prohibition on Drift-Gillnetting
- 685.22 Annual Report

## SUBPART A - GENERAL PROVISIONS

### 685.1 Purpose and Scope

- (a) The regulations in this part govern fishing for billfish and associated species by fishing vessels of the United States in the fishery conservation zone (FCZ) off the coasts of Hawaii, American Samoa, Guam, and the U.S. possessions.
- (b) Regulations governing fishing for billfish and associated species by fishing vessels other than vessels of the United States are published at 50 CFR Part 611.
- (c) These regulations implement the Fishery Management Plan for the Fisheries for Billfish and Associated Species in the U.S. Fishery Conservation Zone of the Western Pacific Region (FMP) developed by the Western Pacific Regional Fishery Management Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

### 685.2 Definitions

In addition to the definitions in the Magnuson Act, the terms used in this part have the following meanings (some definitions in the Magnuson Act have been repeated here to aid understanding of the regulations):

Administrator means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), or a designee.

Associated species refers to the following species managed by the FMP:

- (a) "mahimahi" means "dolphin fish" (Coryphaena hippurus and Coryphaena equiselis)
- (b) "oceanic sharks" means sharks of the families Caracharhinidae, Alopiidae, Sphyrnidae, and Lamnidae;
- (c) "wahoo" means fish of the species Acanthocybium solanderi.

Authorized officer means:

- (a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard.
- (b) Any special agent of the National Marine Fisheries Service.

- (e) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or
- (d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Billfish means broadbill swordfish (Xiphias gladius), blue marlin (Makaira nigricans), black marlin (Makaira indica), striped marlin (Tetrapturus audax), sailfish (Istiophorus platypterus), and shortbill spearfish (Tetrapturus angustirostris).

Drift-gillnet means a floating rectangular net with one or more layers of mesh which is set vertically in the water.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery Management Area means the fishery conservation zone off the coasts of Hawaii, American Samoa, Guam, and U.S. possessions in the western Pacific. The outer boundary of the fishery management area north of Guam shall extend to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands.

Fishing means:

- (a) The catching, taking, or harvesting of fish;
- (b) The attempted catching, taking or harvesting of fish;
- (c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or
- (d) Any operations at sea in support of, or in preparation for, any activity described above.

This term does not include any scientific research activity which is conducted by a scientific research vessel.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Land or landing means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. Section 1801 et seq., as amended.

Maximum Sustainable Yield (MSY) means an average over a reasonable length of time of the largest catch which can be taken continuously from a stock.

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or by the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

- (a) Any person who owns that vessel in whole or in part;
- (b) Any charterer of the vessel, whether bareboat, time, or voyage;
- (c) Any person who acts in the capacity of a charterer including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or
- (d) Any agent designated as such by a person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local or foreign government or any entity of any such government.

Regional Director means the Southwest Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, or a designee.

Secretary means the Secretary of Commerce or the person(s) to whom appropriate authority has been delegated.

State means the State of Hawaii, the Territory of American Samoa and the Territory of Guam.

Vessel of the United States means (a) a vessel documented or numbered by the U.S. Coast Guard under U.S. law; or (b) a vessel, under five net tons, which is registered under the laws of any State.

### 685.3 Relation To State Laws

This part recognizes that any State law which pertains to vessels registered under the laws of that State while in the fishery management area, and which is consistent with the FMP including any State landing law, shall continue in effect with respect to fishing activities regulated under this part.

### 685.4 Reporting

This part recognizes that catch and effort data necessary for implementing the FMP are collected by the State of Hawaii, American Samoa, and Guam under existing State data collection programs. No additional Federal reports are required of fishermen or processors as long as the data collection and reporting systems operated by the State agencies continue to provide the Secretary with Statistical information adequate for management.

### 685.5 General Prohibitions

It is unlawful for any person:

- (a) To possess, have custody or control of, ship or transport, offer for sale, sell, purchase, import or export any billfish or associated species taken, retained, or landed in violation of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;
- (b) To refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;
- (c) To forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (b) of this section;
- (d) To resist a lawful arrest for any act prohibited by this part;
- (e) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;
- (f) To interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Magnuson Act;

- (g) To transfer, or attempt to transfer, directly or indirectly, any U.S.-harvested billfish or associated species to any foreign fishing vessel within the FCZ, unless the foreign vessel has been issued a permit which authorizes the receipt of U.S.-harvested fish of the species being transferred;
- (h) To fail to comply immediately with enforcement and boarding procedures specified in Section 685.6;
- (i) To fish for billfish or associated species in violation of any terms or conditions attached to an experimental fishing permit (EFP) issued under Section 685.8;
- (j) To fish for billfish or associated species using gear prohibited under Section 685.21 or under an EFP issued under Section 685.8;
- (k) To violate any other provision of this part, the Magnuson Act, or any other regulation or permit promulgated under the Magnuson Act.

685.6 Enforcement

- (a) General. The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.
- (b) Communications
  - (i) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.
  - (ii) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radio-telephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.
  - (iii) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

- (iv) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radio-telephone, flashing light signal, or other means constitutes prima facie evidence of the offense of refusal to permit an authorized officer to board.
  - (v) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radio-telephone must consider the signal to be a command to stop the vessel instantly.
- (c) Boarding. The operator of a vessel directed to stop must:
- (i) Guard Channel 16, VHF-FM if so equipped;
  - (ii) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;
  - (iii) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;
  - (iv) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and
  - (v) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.
- (d) Signals. The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radio-telephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.
- (i) "AA" repeated (.-/.-)\* is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radio-telephone or by illuminating the vessel's identification.
  - (ii) "RY-CY" (.-/-.-/-.-/-.-) means "you should proceed at slow speed, a boat is coming to you". This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in water.



- (iii) "SQ3" (.../--./...-- ) means "you should stop or heave to; I am going to board you".
- (iv) "L" (.-..) means "you should stop your vessel instantly".

\* Period (.) means a short flash of light.  
Dash (-) means a long flash of light.

#### 685.7 Penalties

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, and 50 CFR Part 620 (Citations), 50 CFR Part 621 and 15 CFR Part 904 (Civil Procedures) and other applicable laws.

#### 685.8 Experimental Fishing Permit

- (a) General. The Secretary may authorize, for limited experimental purposes, the direct or incidental harvest of billfish or associated species managed by the FMP which would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an experimental fishing permit (EFP) issued by the Secretary in accordance with the criteria and procedures specified in this section. EFP's will be issued without charge.
- (b) Application. An applicant for an EFP shall submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:
  - (i) The date of the application;
  - (ii) The applicant's name, mailing address, and telephone number;
  - (iii) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;
  - (iv) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;
  - (v) For each vessel to be covered by the EFP:
    - (A) Vessel name;

- (B) Name, address, and telephone number of owner and master;
  - (C) U.S. Coast Guard documentation, State license, or registration number;
  - (D) Home port;
  - (E) Length of vessel;
  - (F) Net tonnage; and
  - (G) Gross tonnage.
- (vi) A description of the species (directed and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment;
  - (vii) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used; and
  - (viii) The signature of the applicant.

The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(c) Issuance

- (i) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the FEDERAL REGISTER with a brief description of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Western Pacific Regional Fishery Management Council, the U.S. Coast Guard, and the fishery management agency of the affected State, accompanied by the following information:
  - (A) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested;

(B) A citation of the regulation or regulations which, without the EFP, would prohibit the proposed activity; and

(C) Biological information relevant to the proposal.

(ii) At a Western Pacific Regional Fishery Management Council meeting following receipt of a complete application, the Secretary will consult with the Western Pacific Regional Fishery Management Council and the Director of the affected State fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application if the applicant desires.

(iii) Within 5 working days after the consultation in paragraph (c)(ii) of this section, or as soon as practicable thereafter, the Secretary shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

- (A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or
- (B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way; or
- (C) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose; or
- (D) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP; or
- (E) The applicant has failed to demonstrate a valid justification for the permit; or
- (F) The activity proposed under the EFP would create a significant enforcement problem.

(iv) The decision of the Secretary to grant or deny an EFP is final and unappealable. If the permit is granted, the Secretary will publish a notice in the FEDERAL REGISTER describing the experimental fishing to be conducted under

the EFP. The Secretary may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

- (A) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;
  - (B) The number, sizes, names, and identification numbers of the vessel authorized to conduct fishing activities under the EFP;
  - (C) The time(s) and place(s) where experimental fishing may be conducted;
  - (D) The type, size, and amount of gear which may be used by each vessel operated under the EFP;
  - (E) The condition that observers be carried aboard vessels operated under an EFP;
  - (F) Data reporting requirements; and
  - (G) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FMP.
- (d) Duration. Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than one year unless revoked, suspended, or modified. EFP's may be renewed following the application procedures in this section.
- (e) Alteration. Any permit that has been altered, erased, or mutilated is invalid.
- (f) Transfer. EFP's issued under this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.
- (g) Inspection. Any EFP issued under this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.
- (h) Sanctions. Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of Subpart B of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, shall be grounds for revocation, suspension, or modification of the EFP with respect to all

persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR Part 904 Subpart D, or 50 CFR Part 621. Other sanctions available under the statute will be applicable.

- (i) Protected Species. Vessels fishing under an EFP are required to report any incidental take or fisheries interaction with protected species on a form provided for that purpose. Reports shall be submitted to the Regional Director within 3 days of arriving in port.

## SUBPART B - MANAGEMENT MEASURES

### 685.21 Prohibition on Drift-Gillnetting

Fishing with drift-gillnets in the management area is prohibited, except where authorized by an experimental fishing permit issued under section 685.8 of this part.

### 685.22 Annual Report

By June 30 of each year the Plan Monitoring Team shall prepare an annual report for the Council on the domestic and foreign fisheries for billfish and associated species in the management area.

### 685.23 Five-Year Review

Within five years of the effective date of this FMP, the Council in cooperation with the National Marine Fisheries Service and State and Territorial agencies shall conduct a full review of the FMP. The review will assess the effectiveness of the FMP in meeting the Council's objectives, the need to revise the objectives, and the need for changes in any management measures including adjustments in area closure to foreign longline fishing and adding data collection or reporting requirements for the domestic fisheries which take the management unit species and the tunas.

