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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 110131070–2626–02; RTID 0648-XA306]

**Pacific Island Pelagic Fisheries; False Killer Whale Take Reduction Plan;
Reopening of the Southern Exclusion Zone to the Hawaii Deep-set Longline Fishery**

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

ACTION: Temporary rule.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, and the False Killer Whale Take Reduction Plan, NMFS hereby reopens the Southern Exclusion Zone to deep-set longline fishing for all vessels registered under the Hawaii longline limited access program. At least one of the Southern Exclusion Zone reopening criteria defined in the False Killer Whale Take Reduction Plan regulations has been met.

DATES: Effective August 25, 2020.

FOR FURTHER INFORMATION CONTACT: Diana Kramer, NMFS Pacific Islands Region, (808) 725-5167, Diana.Kramer@noaa.gov; or Kristy Long, NMFS Office of Protected Resources, (301) 427-8402, Kristy.Long@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The False Killer Whale Take Reduction Plan (Plan) was implemented on December 31, 2012, pursuant to section 118(f) of the Marine Mammal Protection Act

(MMPA) to reduce the level of incidental mortality and serious injury (M/SI) of the Hawaii pelagic and Hawaii insular stocks of false killer whales in the Hawaii longline fisheries (77 FR 71260; November 29, 2012). The Plan, based on consensus recommendations from the False Killer Whale Take Reduction Team, was implemented by regulations, which created the Southern Exclusion Zone (SEZ) (50 CFR 229.37(d)(2)) that would be closed to deep-set longline fishing if a certain number (trigger) of false killer whale M/SI were observed in the deep-set fishery in the United States Exclusive Economic Zone (EEZ). As described in the Plan regulations, the SEZ is bounded on the east at 154°30' W longitude, on the west at 165° W longitude, on the north by the boundaries of the Main Hawaiian Islands Longline Fishing Prohibited Area and Papahānaumokuākea Marine National Monument, and on the south by the EEZ boundary (see Figure 1). The trigger is the larger of either two observed M/SI of false killer whales within the EEZ around Hawaii, or the smallest number of observed M/SI of false killer whales that, when extrapolated based on the percentage observer coverage for that year, exceeds the stock's potential biological removal (PBR) level. The final 2017 Stock Assessment reports a PBR of 9.3 pelagic false killer whales per year. With 20 percent observer coverage in 2018 and 2019, the trigger remained at two observed M/SI (*i.e.*, two observed M/SI expands to 10, which exceeds the PBR of 9.3).

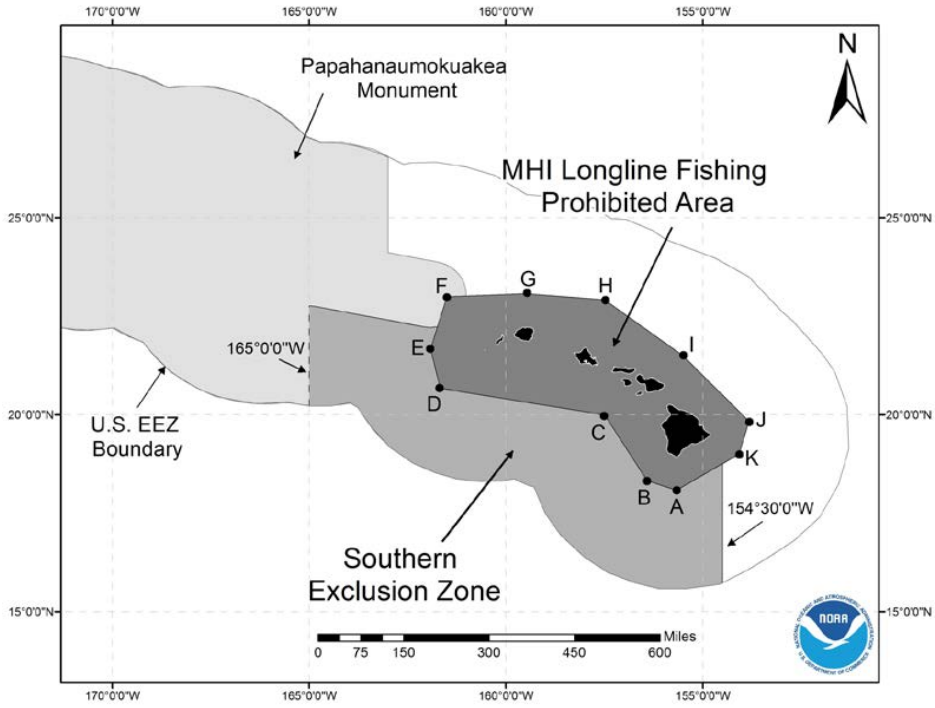


Figure 1. Southern Exclusion Zone

The SEZ was closed to deep-set longline fishing on July 24, 2018, following four false killer whale interactions in the Hawaii deep-set longline fishery that occurred inside the EEZ around Hawaii during that calendar year. NMFS-certified fishery observers documented a total of four false killer whales hooked and released injured during deep-set trips in the U.S. EEZ, one each on February 8, May 23, May 24, and June 3, 2018. NMFS followed the procedures outlined in the final rule and criteria in the NMFS process for distinguishing serious from non-serious injuries of marine mammals (NMFS Policy Directive PD 02-238, NMFS Instruction 02-238, and NMFS Instruction 02-238-01) to evaluate these injuries, and determined that all four were serious injuries, which met the trigger for closing the SEZ (83 FR 33848; July 18, 2018). The SEZ was reopened to deep-set longline fishing on January 1, 2019 per the Plan regulations (50 CFR 229.37(e)(3)).

The SEZ was then closed to deep-set longline fishing for a second consecutive calendar year on February 22, 2019, after the SEZ trigger was met for 2019. NMFS-certified fishery observers documented two false killer whales hooked during deep-set trips in the U.S. EEZ, one each on January 10 and January 15, 2019. One of these interactions resulted in a mortality and the other animal was released injured. Following the procedures outlined in the final rule and criteria in the NMFS process for distinguishing serious from non-serious injuries of marine mammals the injury of the animal that was released was determined to be a serious injury. Therefore, the SEZ trigger had been met, and NMFS closed the SEZ to deep-set longline fishing as required to comply with the Plan (84 FR 5356; February 21, 2019).

Criteria for Reopening the SEZ

Because the number of observed false killer whale M/SI in the EEZ around Hawaii in 2019 met the established trigger in the subsequent calendar year following a previous SEZ closure (2018), the SEZ remains closed until one or more of the following criteria are met, as described in the Plan regulations (50 CFR 229.37(e)(7)): (i) The Assistant Administrator determines, upon consideration of the False Killer Whale Take Reduction Team's recommendations and evaluation of all relevant circumstances, that reopening of the SEZ is warranted; (ii) in the 2 year period immediately following the date of the SEZ closure, the deep-set longline fishery has zero observed false killer whale incidental mortalities and serious injuries within the remaining open areas of the EEZ around Hawaii; (iii) in the 2 year period immediately following the date of the closure, the deep-set longline fishery has reduced its total rate of false killer whale incidental mortality and serious injury (including the EEZ around Hawaii, the high seas, and the EEZ around Johnston Atoll (but not Palmyra Atoll) by an amount equal to or greater than the rate that would be required to reduce false killer whale incidental M/SI within the EEZ around Hawaii to below the Hawaii Pelagic false killer whale stock's PBR level; or (iv) the average estimated level of false killer whale incidental M/SI in the deep-set longline fishery within the remaining open areas of the EEZ around Hawaii for up to the 5 most recent years is below the PBR level for the Hawaii Pelagic stock of false killer whales at that time.

Basis for Determination to Reopen the SEZ

To determine if reopening of the SEZ is warranted, NMFS evaluated all criteria and determined that criterion (iv) has been satisfied based on best available science. In June 2020, NMFS published NOAA Administrative Report H-20-06, "Oleson, E.M.

2020. Abundance, potential biological removal, and bycatch estimates for the Hawaii pelagic stock of false killer whales for 2015–2019.” This report provided updated abundance and M/SI information for the Hawaii pelagic stock of false killer whales. The current abundance estimate for the Hawaii pelagic stock of false killer whales presented in this report is 2,086 (Coefficient of Variation (CV) = 0.35) individuals in the Hawaii EEZ. The minimum population abundance (N_{min}), used for computation of PBR, is calculated as 1,567 animals. The PBR for this stock within the EEZ is calculated to be 16 pelagic false killer whales. Under the Marine Mammal Protection Act Guidelines for Assessing Marine Mammal Stocks (NMFS 2012), the 5-year (2015–2019) average M/SI rate of pelagic false killer whales within the Hawaii EEZ incidental to the Hawaii longline deep-set fishery is 9.8 whales per year. Based on this information, NMFS has determined that criterion (iv) of the Plan is met, with the 5-year average estimated false killer whale M/SI incidental to the deep-set longline fishery (9.8 whales) below PBR level for the Hawaii Pelagic stock of false killer whales (16 whales). Consequently, in compliance with 50 CFR 229.37(e)(8) NMFS is reopening the SEZ to Hawaii deep-set longline fishing.

Information on the Plan is available on the Internet at the following address:

<https://www.fisheries.noaa.gov/pacific-islands/marine-mammal-protection/pacific-islands-region-false-killer-whale-take-reduction-team>. NOAA Administrative Report H-

20-06 is available on the Internet at the following address:

<https://doi.org/10.25923/wmg3-ps37>, and NOAA Technical Memorandum NMFS-

PIFSC-104 is available on the Internet at the following address:

<https://doi.org/10.25923/2jjg-p807>. Copies of reference materials may also be obtained

from the NMFS Pacific Islands Regional Office, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

This document serves as advance notification to fishermen, the fishing industry, and the general public that the SEZ will be opened to deep-set longline fishing starting on August 25, 2020.

Classification

There is good cause to waive prior notice and an opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B). Prior notice and comment is unnecessary because the take reduction plan final rule (77 FR 71259, November 29, 2012) that implements the procedure reopening the SEZ (codified at 50 CFR 229.37(e)) has already been subject to an extensive public process, including the opportunity for prior notice and comment. All that remains is to notify the public that the SEZ reopening criteria defined in the Plan regulations have been met and the SEZ will be opened to deep-set longline fishing.

This action is required by 50 CFR 229.37(e)(7), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1361*et seq.*

Dated: August 14, 2020.

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National Marine Fisheries Service.