



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

**[Docket No. 220421-0102]**

**RIN 0648-BK74**

**Pacific Island Fisheries; Pelagic Longline Gear and  
Operational Requirements**

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule, NMFS prohibits the use of wire leaders in the Hawaii deep-set longline fishery, and requires the removal of fishing gear from any oceanic whitetip shark caught in all of the region's domestic longline fisheries. The rule is intended to increase post-hooking survival of threatened oceanic whitetip sharks.

**DATES:** The final rule is effective [*insert date 30 days after date of publication in the **FEDERAL REGISTER***].

**ADDRESSES:** Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808-522-8220, fax 808-522-8226, or [www.wpcouncil.org](http://www.wpcouncil.org).

Copies of the environmental analyses and other supporting documents for this action are available from

<https://www.regulations.gov/docket?D=NOAA-NMFS-2021-0099>,  
or from Michael D. Tosatto, Regional Administrator, NMFS  
Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd.  
Bldg. 176, Honolulu, HI 96818.

**FOR FURTHER INFORMATION CONTACT:** David O'Brien, NMFS  
Pacific Islands Regional Office, Sustainable Fisheries,  
808-725-5038.

**SUPPLEMENTARY INFORMATION:** NMFS and the Western Pacific  
Fishery Management Council (Council) manage the Hawaii  
(shallow-set and deep-set) and America Samoa longline  
fisheries under the FEP as authorized by the Magnuson-  
Stevens Fishery Conservation and Management Act (Magnuson-  
Stevens Act). These fisheries occasionally catch oceanic  
whitetip sharks (*Carcharhinus longimanus*). NMFS listed  
oceanic whitetip sharks as threatened under the Endangered  
Species Act (ESA) on January 30, 2018 (83 FR 4153). In an  
effort to improve survival of oceanic whitetip sharks  
unintentionally caught in the FEP longline fisheries, this  
rule prohibits the use of wire leaders, specifically steel  
wire line within 1 meter of the hook, in the Hawaii deep-  
set fishery. Wire leaders are difficult for sharks to bite  
off and free themselves and difficult for fishermen to cut  
from deck height as compared to alternative monofilament  
leaders. The rule also requires, with limited exceptions  
for safety and data collection, that fishermen remove  
fishing gear from any oceanic whitetip shark caught in all

longline fisheries operating under the FEP. The rule is intended to reduce the amount of fishing gear (aka, trailing gear) attached to released oceanic whitetip sharks. Long trailing gear reduces survivorship of oceanic whitetip sharks unintentionally caught in the fisheries.

You may find additional background information on this action in the preamble to the proposed rule published on January 19, 2022 (87 FR 2742).

### **Comments and Responses**

On January 19, 2022, NMFS published a proposed rule, an Environmental Assessment (EA), and Regulatory Impact Review (RIR) for public comment (86 FR 2742). The comment period ended February 18, 2022. We received 46 comments from individuals and 2 from organizations. In general, all comments supported the proposed rule. All comments related to the proposed rule; there were no comments directed at analysis presented in the EA or the RIR. We summarize and respond to the comments here, combining substantially similar comments.

*Comment 1:* Many commenters expressed strong support for the proposed rule noting the importance of sharks to marine ecosystem and threats to the species, including fisheries interactions and climate change.

*Response:* NMFS agrees and will continue to manage and regulate Federal fisheries for sustainability, and to minimize bycatch, bycatch mortality, and interactions with

protected species consistent with the Magnuson-Stevens Act, the ESA, the FEP, and implementing regulations.

*Comment 2:* Several commenters expressed strong support for the proposed rule, noting benefits to both marine species and fishing industry participants.

*Response:* We agree. Building from an industry-led initiative and recommendation from the Council, the Council and NMFS developed this rule to improve post-hooking survival of threatened oceanic whitetip sharks while minimizing economic impacts to fishermen. Other species of sharks and protected species that are too large to be brought aboard fishing vessels to remove fishing gear are expected to benefit as well. The EA and RIR evaluated the economic impact of the rule and found the potential for an overall reduction in costs to fishermen for gear repair and replacement, and potential increase in catchability of target fish species like tuna.

*Comment 3:* Several commenters suggested handling requirements should be extended to all species of sharks and rays that interact with longline fisheries, including specific mention of silky sharks.

*Response:* This rule is specifically aimed at improving post-hooking survival of ESA-listed oceanic whitetip sharks incidentally hooked in these longline fisheries and we anticipate a more than 30 percent decrease in post-hooking mortality of oceanic whitetip sharks as a result.

Interactions with silky sharks are rare in FEP longline fisheries. NMFS estimates U.S. longline fisheries catch, on average, 0.8 percent or less of the total silky shark catch in the Western and Central Pacific Ocean (WCPO). The species is not listed under the ESA and the WCPO stock is not overfished, but it is experiencing overfishing.

Consistent with requirements of the Magnuson-Stevens Act, the Council has made recommendations to the U.S. Secretary of State and the U.S. Congress for international actions that will end overfishing of silky sharks, taking into account the relative impact of vessels of the United States and other nations on the stock. Extending these handling regulations to all shark and ray species would exceed the purpose and need for the action, but we are optimistic that the ease of removing monofilament nylon leaders relative to wire leaders will result in less trailing gear on other sharks and other bycatch species, particularly animals that are too large to be brought onboard the vessel to facilitate release and gear removal. The regulated longline fisheries also currently adhere to international shark handling and release requirements of regional fisheries management organizations in the Pacific to which the United States is a member, including the Western and Central Pacific Fisheries Commission (WCPFC) and Inter-American Tropical Tuna Commission (IATTC). Federal fisheries are managed under a suite of requirements designed to reduce

the likelihood and severity of effects of unintentional and incidental interactions with protected and other non-target species, and that allow monitoring of interactions. NMFS continually evaluates monitoring and scientific information to determine whether they change our understanding of the potential effects of our management decisions and prepares supplemental environmental analyses, as appropriate.

*Comment 4:* Several commenters said all longline fisheries should stop using wire leaders, with one noting that because shark fishing is now illegal in Hawaii a prohibition on wire leaders is appropriate.

*Response:* This rule is intended to prohibit the use of wire leaders in the Hawaii deep-set longline fishery. The Hawaii shallow-set and American Samoa longline fisheries do not use wire leaders and a prohibition is not currently necessary for these fisheries. We note that the longline fisheries covered by this rule fish outside Hawaii State waters in the Exclusive Economic Zone or Federal waters, generally 3-200 nautical miles from shore, around American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Hawaii, the U.S. Pacific Remote Island Areas, and on adjacent high seas. Ending the use of wire leaders in the only U.S. Pacific longline fishery that uses this gear could serve as a model for regional fisheries management organizations, like the WCPFC and IATTC, to consider in

bycatch management for longline fleets of all nations fishing in the Pacific Ocean.

*Comment 5:* One commenter expressed support for the action to ensure a better survival rate of critically endangered species and to prevent pollution of the ocean.

*Response:* Please see our response to *Comments 1-3* above regarding expected improvements in post-hooking survival rates. When fishing, all longliners occasionally lose hooks, mainline, floats, float lines, and branch lines, which include hooks, lead weights, and leaders in the deep-set fishery. This derelict longline gear may impact marine benthic habitats, especially substrate such as corals if carried by currents to shallow depths. Fishermen do try to recover gear, and are normally successful. The floats used in the fishery are marked to be visible from distance, even at night. We do not expect this rule to change the frequency that gear is lost in FEP fisheries, so do not expect an increase in the amount of pollution.

*Comment 6:* Many commenters noted that the prohibition of wire leaders will improve shark survival and safety for fishermen.

*Response:* Please see our response to *Comments 1-3* above regarding shark survival. Prohibiting wire leaders has the potential to decrease safety for fishermen because fly backs are more common when using the alternative

monofilament nylon leaders. As noted in the EA, we are working with vessel owners and operators and the Hawaii Longline Association (HLA) to educate fishermen about the risks and how to minimize them, including training on construction and use of a reusable fly back prevention device from inexpensive materials readily available on longline vessels.

*Comment 7:* One commenter noted the proposed rule does not support a prohibition on light sticks.

*Response:* Existing regulations prohibit light sticks in the Hawaii deep-set longline fishery and they are not the subject of this rule.

*Comment 8:* A comment letter, signed by five organizations, supported EA alternative 3 that would prohibit wire leaders and require specific handling of oceanic whitetip sharks in all longline fisheries operating under the FEP for consistency, to ease enforcement, and to strengthen U.S. positions in international fishery negotiations.

*Response:* As stated in EA section 2.4.2 and described in our response to *Comment 4* above, the Council's recommendation for alternative 2 was based on the determination that a regulatory prohibition of wire leaders is not necessary in other FEP fisheries because wire leaders are only used in the Hawaii deep-set longline fishery. NMFS and the Council attempt to minimize



unnecessary regulation and focus on achieving the stated purpose and need for any action. This rule as described in EA alternative 2, option B, meets the purpose and need. There are no consistency or enforcement concerns as all three fisheries already have a suite of regulations that are fishery specific. International adoption of wire leader prohibitions would be beneficial for threatened oceanic whitetip sharks and we hope this rule will help influence that; however, consistency in U.S. domestic regulations is not a prerequisite to development or adoption of U.S. positions or activities related to international fisheries management.

*Comment 9:* A comment letter, signed by five organizations, recommended extending handling requirements to all shark species and adding requirements to keep all incidentally caught sharks in the water with water flowing over their gills, prohibit gaff use, and require the vessel operator to supervise crew during any shark handling. This commenter also recommended requiring annual shark handling training for all crewmembers, and post a NMFS-approved placard with release procedures on all longline vessels. Rationales for these recommendations included the Magnuson-Stevens Act requirement to minimize bycatch mortality and consistency with shark handling guidelines from regional fisheries management organizations.

*Response:* Regarding the recommendation to extend handling requirements to all shark species, see our response to *Comment 3*. Additional handling requirements such as those suggested were not recommended for this action. NMFS and the Council recognize the importance of training associated with implementation of this rule, particularly regarding crew safety. Owners and operators of longline vessels are required to annually attend a NMFS protected species workshop where handling requirements and recommendations are reviewed. Those workshops provide information to owners and operators to distribute to crews, including illustrated protected species handling guides in English, Indonesian, Vietnamese, and Tagalog (the languages most commonly spoken by fishermen in the FEP fisheries). The HLA also provides the same illustrated handling guides online.

*Comment 10:* A comment letter, signed by five organizations, recommended additional gear requirements including a minimum depth requirement of 100 meters for hooks in the Hawaii deep-set longline fishery, the use of corrodible non-stainless circle hooks, and a circle hook requirement for the American Samoa longline fishery. The stated rationales for these recommendations included research that suggests removal of shallow hooks could nearly double the mortality rate reduction seen with the proposed rule, consistency with other U.S. fisheries, ease

of enforcement, and strengthening U.S. positions in international fishery negotiations for the use of circle hooks in the American Samoa fishery and non-stainless hooks in all FEP fisheries.

*Response:* Removal of shallow hooks was noted in EA section 2.5 as an alternative considered, but rejected from further analysis relative to the purpose and need for the action. Although simulation studies indicate that removing the shallowest hooks would reduce hooking rates of oceanic whitetip sharks, rationales for this rejection included difficulty to operationalize and enforce, uncertainty if the approach would work including lack of evidence of greater hook depth in the American Samoa longline fishery reducing oceanic whitetip shark interactions, and removing shallow hooks would be expected to reduce revenue in the Hawaii deep-set fishery by \$11-13 million annually.

Non-stainless steel or corrodible hooks were also considered, but rejected from further analysis. As stated in EA section 2.5, rationales for this rejection included a lack of scientific evidence that hook corrosion would improve post-hooking survival and non-stainless steel hooks would need to be replaced more frequently, which could result in negative economic impacts on the fishery.

Regulations to require circle hooks in the American Samoa longline fishery are unnecessary as circle hooks are already used in that fishery. As previously noted, NMFS and

the Council seek to minimize unnecessary regulations and focus on the achieving the stated purpose and need for any action.

*Comment 11:* A comment letter, signed by five organizations, recommended NMFS ensure that the rule does not negatively impact other species, including false killer whales and seabirds. Also recommended a minimum diameter of monofilament leaders to ensure that weak hooks for false killer whale protection still function properly and that monofilament leaders do not reduce the efficacy of weighted branch lines in avoiding interactions with seabirds. The stated rationales for these recommendations are that only 10 percent of hooks in false killer whale interactions are straightening, and increasing seabird interactions since 2004.

*Response:* Monitoring of FEP longline fisheries will continue in the future, including mandatory catch logbooks, required vessel monitoring, and NMFS fishery observers. Interactions with protected species are tracked and reported quarterly. Changes in rates of protected species interactions are analyzed across years and can be used to address the efficacy of regulations to mitigate protected species interactions such as with false killer whales and seabirds. Starting in 2022, NMFS observers will collect additional information regarding elasmobranch (shark and ray) interactions, including handling methods and length of

trailing gear. With respect to leader diameter, NMFS specifies regulations to mitigate false killer whale interactions at 50 CFR 229.37 including minimum leader and branch line diameters and breaking strengths.

#### **Changes from the Proposed Rule**

The final rule contains no changes from the proposed rule.

#### **Classification**

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS received no comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 50 CFR 665**

American Samoa, Endangered and threatened species, Fisheries, Fishing, Hawaii, Longline, Oceanic whitetip sharks, Pacific Islands, Release requirements, Western Pacific.

Dated: April 22, 2022.

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Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 as follows:

**PART 665 -- FISHERIES IN THE WESTERN PACIFIC**

1. The authority citation for 50 CFR part 665 continues to read as follows:

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

2. In § 665.800 revise the definition of “Deep-set or Deep-setting” to read as follows:

**§ 665.800 Definitions.**

\* \* \* \* \*

*Deep-set* or *Deep-setting* means the deployment of longline gear in a manner consistent with all the following

criteria: All float lines are at least 20 meters in length; a minimum of 15 branch lines are attached between any two floats (except basket-style longline gear which may have as few as 10 branch lines between any two floats); no metal wire line within 1 meter of the hook; and no light sticks are used. As used in this definition, "float line" means a line used to suspend the main longline beneath a float, and "light stick" means any type of light emitting device, including any fluorescent "glow bead," chemical, or electrically-powered light that is affixed underwater to the longline gear.

\* \* \* \* \*

3. In § 665.802 add paragraphs (gg) and (hh) to read as follows:

**§ 665.802 Prohibitions.**

\* \* \* \* \*

(gg) Use or have on board longline gear with metal wire line within 1 meter of the hook when operating a vessel registered for use under a longline permit issued under § 665.801(b) at any time during a trip for which notification to NMFS under § 665.803(a) indicated that deep-setting would be done, in violation of § 665.813(d).

(hh) Fail to handle and release an oceanic whitetip shark in accordance with the requirements set forth at § 665.811(a) when operating a vessel registered for use under

any longline permit issued under § 665.801, in violation of § 665.811.

\* \* \* \* \*

4. Add § 665.811 to read as follows:

**§ 665.811 Handling and release of oceanic whitetip sharks.**

(a) The owner and operator of a vessel registered for use under any longline permit issued under § 665.801 must release any oceanic whitetip shark as soon as possible after the shark is caught and brought alongside the vessel, in accordance with 50 CFR 300.226, and must take the following actions:

(1) Leave the animal in the water;

(2) Use a dehooker, as defined in § 665.812(a)(7), or line clippers, as defined in § 665.812(a)(5), to remove trailing gear from the animal.

(3) When using line clippers, the branch line must be cut as close to the hook as possible.

(b) Paragraph (a) of this section does not apply if doing so would compromise the safety of any persons or a WCPFC observer collects, or requests assistance collecting, samples of oceanic whitetip shark in the Convention Area, as defined in § 300.211 of this title and in accordance with 50 CFR 300.226.



5. In § 665.813 revise paragraph (d) to read as follows:

**§ 665.813 Western Pacific longline fishing restrictions.**

\* \* \* \* \*

(d) Vessels registered for use under a Hawaii longline limited access permit may not have on board at any time during a trip for which notification to NMFS under § 665.803(a) indicated that deep-setting would be done any float lines less than 20 meters in length, longline gear with metal wire line within 1 meter of the hook, or light sticks. As used in this paragraph "float line" means a line used to suspend the main longline beneath a float, and "light stick" means any type of light emitting device, including any fluorescent "glow bead," chemical, or electrically powered light that is affixed underwater to the longline gear.

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