

year. Carryover adjustments for the South Atlantic shall be limited to 100 mt ww (75.2 mt dw) for that year. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication any adjustment or apportionment made under this paragraph.

\* \* \* \* \*

4. In § 635.28, paragraph (c)(2) is revised to read as follows:

**§ 635.28 Closures.**

\* \* \* \* \*

(c) \* \* \*

(2) *Incidental catch closure.* When the annual incidental catch quota specified in § 635.27(c)(1)(i) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure. From the effective date and time of such notification until additional incidental catch quota becomes available, no swordfish may be landed in an Atlantic coastal state, or be possessed or sold in or from the Atlantic Ocean north of 5° N. lat. unless the directed fishery is open and the appropriate permits have been issued to the vessel. In the event of a directed and incidental North Atlantic swordfish category closure, South Atlantic swordfish may be possessed in the Atlantic Ocean north of 5° N. lat. and/or landed in an Atlantic coastal state on a vessel with longline gear onboard, provided that the harvesting vessel does not fish on that trip in the Atlantic Ocean north of 5° N. lat., the fish were taken legally from waters of the Atlantic Ocean south of 5° N. lat., and the harvesting vessel reports positions with a vessel monitoring system as specified in § 635.69.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

[Docket No. 070226045 7045 01; I.D. 020107A]

**RIN 0648-AT55**

**Fisheries in the Western Pacific; Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region; Management Measures for Bigeye Tuna Pacific-wide and Yellowfin Tuna in the Western and Central Pacific Ocean**

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

**ACTION:** Proposed rule; withdrawn; partial approval of fishery management plan amendment.

**SUMMARY:** NMFS partially approved Amendment 14 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Amendment 14), prepared by the Western Pacific Fishery Management Council (Council). The Council's recommendation for international management action to end overfishing of bigeye and yellowfin tuna stocks was approved. The remaining portions of the amendment relating to internal protocols for managing Pacific pelagic species in international waters, and new Federal permitting and data reporting requirements for the domestic Hawaii-based pelagic (non-longline) fisheries, were not approved.

**DATES:** The Council was notified that the amendment was partially approved on May 16, 2007.

**ADDRESSES:** Copies of the Pelagics FMP and Amendment 14 may be obtained from Kitty M. Simonds, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

**FOR FURTHER INFORMATION CONTACT:** Bob Harman, NMFS, (808) 944-2271.

**SUPPLEMENTARY INFORMATION:** On December 15, 2004, NMFS notified the Western Pacific and Pacific Fishery Management Councils that overfishing was occurring on bigeye tuna Pacific-wide (69 FR 78397, December 30, 2004). On March 16, 2006, NMFS notified the Western Pacific Council (Council) that overfishing was occurring on western and central Pacific (WCPO) yellowfin tuna (71 FR 14837, March 24, 2006).

In response to these determinations, the Council prepared and transmitted to

NMFS for review by the Secretary of Commerce (Secretary), Amendment 14 to the Pelagics FMP. Amendment 14, "Management Measures for Pacific Bigeye Tuna and Western and Central Pacific Yellowfin Tuna," addressed the overfishing condition of these tunas, as was required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at the time the Council was notified of the overfishing.

Amendment 14 contained several recommended international and domestic management measures. The recommended international measures included specific recommendations to NMFS, the Department of State, and the U.S. delegations to the Pacific tuna regional fishery management organizations, to immediately end international overfishing in the WCPO and the eastern Pacific, and to establish a mechanism by which the Council would be involved in international negotiations that involve management of fisheries under the jurisdiction of the Council and NMFS in the western Pacific.

Domestically, Amendment 14 included the establishment of control dates for most domestic pelagic fisheries, and proposed to enhance data collection for Hawaii-based small boat pelagic fisheries through mandatory Federal permits and logbooks for commercial small boat fisheries and improved surveys and voluntary reporting for recreational fisheries.

NMFS published a notice of availability for Amendment 14 on February 15, 2007 (72 FR 7385), and the comment period ended on April 16, 2007. NMFS received no comments on the amendment. On March 29, 2007, NMFS subsequently published a proposed rule for the permitting and data collection requirements for Hawaii-based, non-longline, pelagic commercial vessels (72 FR 14761), and the comment period ended on May 14, 2007. NMFS received one comment on the amendment's proposed measures. The Hawaii Department of Land and Natural Resources expressed concern that the establishment of a separate Federal permit and reporting requirement, duplicating the state's existing commercial marine license reporting system, would impose an unnecessary burden on fishermen. Instead, the state strongly favors a joint and collaborative effort with NMFS, under an existing data sharing agreement, to help improve its fisheries data collection program to better monitor Hawaii's pelagic non-longline, commercial fishery.

### International Provisions

Since NMFS determined that overfishing was occurring on Pacific bigeye and WCPO yellowfin tunas, the reauthorization of the Magnuson-Stevens Act and related legislation created new requirements related to the international management of fisheries. These new requirements affect the significance of the Council's recommendations for international action to end overfishing of Pacific bigeye and WCPO yellowfin tunas, and the protocol specifying the Council's involvement in future international management efforts.

### Council Recommendations for International Management Action

Section 406 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) created a new section 304(i) in the Magnuson-Stevens Act entitled International Overfishing. Section 304(i) applies to fisheries that the Secretary determines are approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures to end overfishing under an international agreement to which the United States is a party. If these conditions are met, then the Council is relieved of its responsibility under section 304(e) to prepare and implement a fishery management plan, plan amendment, or proposed regulations to end overfishing immediately, or to prevent overfishing from occurring. In lieu of the requirement to implement a plan, amendment, or proposed regulations, section 304(i) requires the Council to develop and submit to the Secretary, recommendations for domestic regulations to address the relative impact of fishing vessels of the United States, and to develop and submit to the Secretary of State and to the Congress, recommendations for international actions that will end overfishing in the fishery, taking into account the relative impact of vessels of other nations and vessels of the United States. Section 304(i) does not provide that the required recommendations must be developed and submitted through a plan or plan amendment, or through any particular vehicle. However, section 304(i) does not expressly preclude a council from developing and submitting such recommendations through a plan or plan amendment.

Amendment 14 and the proposed rule recognized that Pacific bigeye tuna and WCPO yellowfin tuna are exploited by foreign fishing fleets along with the U.S.

fleet, and that U.S. fisheries account for only a small percentage of the Pacific bigeye and WCPO yellowfin tuna harvests. For example, in 2004, the estimated bigeye tuna catch by U.S. commercial fisheries was 2.3 percent of the 2004 total Pacific-wide bigeye tuna catch, and the estimated yellowfin tuna catch was about 0.35 percent of the 2004 total Pacific-wide yellowfin tuna catch, and 0.58 percent of the yellowfin tuna caught in the WCPO. These figures demonstrate that the overfishing is a result of excessive international fishing pressure, and indicate that the capacity for unilateral action by the United States to prevent or end overfishing is limited.

There are existing management measures to address fishing mortality under international agreements to which the United States is a party; however, none of the measures are adequate to end overfishing of the subject stocks. In response to concerns about the condition of the bigeye tuna stock in the Eastern Pacific Ocean, the Inter-American Tropical Tuna Commission (IATTC) adopted management measures, commencing with temporal closures of purse-seine fishing and bigeye tuna catch limits for longline vessels. Within the area of competence of the IATTC, the longline fleets of China, Japan, Korea, and Chinese Taipei were allocated specific catch limits. Other member nations of the IATTC were allocated bigeye tuna catch limits equivalent to their respective 2001 catches. The United States, a member nation of the IATTC, received a fleet-wide longline bigeye tuna limit of 150 mt, and this quota was increased to 500 mt for 2007. These measures are insufficient to achieve the reductions recommended by IATTC staff to end the overfishing.

The United States is also a Cooperating Non-member of the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The WCPFC, established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), adopted conservation and management measures for WCPO yellowfin tuna and WCPO bigeye tuna in 2005 and 2006. The measures include national limits on bigeye tuna catches by longline fisheries in the Convention area (which overlaps with the area of competence of the IATTC), based on each member's average 2001–04 catches, or for China and the United States, based on their 2004 catches. These limits will remain in effect through 2008. Similar to the IATTC

circumstances, these measures are insufficient to achieve the reductions recommended by the Scientific Committee to end overfishing.

Based on the above, and as acknowledged in the proposed rule (72 FR 14763), Pacific bigeye tuna and WCPO yellowfin tuna are experiencing overfishing due to excessive international fishing pressure. Existing management measures are not sufficient to end the overfishing under international agreements to which the United States is a party. Thus, the Council is required under section 304(i) to develop recommendations for domestic regulations to address the relative impact of fishing vessels of the United States, and to develop and submit to the Secretary of State and to the Congress, recommendations for international actions that will end overfishing in the fishery, taking into account the relative impact of vessels of other nations and vessels of the United States.

The measures proposed in Amendment 14 satisfy the Council's obligations under section 304(i) to submit recommendations for international action. As noted above, there is no reason a council may not develop and submit such recommendations through a plan and plan amendment. Thus, these recommendations contained in Amendment 14 were approved and will be forwarded to the Secretary of State and Congress for appropriate consideration, and the Council need not submit additional measures in order to comply with existing legal mandates.

### Council Protocol for International Participation

Amendment 14 contained a recommendation for establishing a protocol related to the Council's role in the management of pelagic fish stocks that are managed internationally. The protocol included steps the Council would take to monitor the status of internationally managed fish stocks, participate in U.S. delegations in meetings with international regional fisheries management organizations (RFMO), and make recommendations for international agreements.

Section 503(f) of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA) requires the development of a memorandum of understanding (MOU) among the Secretary of Commerce, the Secretary of State, and the three Councils in the Pacific. The MOU will clarify the roles of the respective Councils in international fishery management discussions relating to

stocks under Council jurisdictions, as well as with respect to development of domestic fishing regulations for such stocks that are consistent with international management negotiations.

The MOU is under development by the Councils and the Secretary, in consultation with the Secretary of State. It will address participation in U.S. delegations to international fishery organizations in the Pacific Ocean, including government-to-government consultations; providing formal recommendations to the Departments of Commerce and State regarding necessary measures for domestic and foreign vessels fishing for highly migratory species, coordinating positions within the U.S. delegation for presentation to the appropriate international fishery organization, and recommending those domestic fishing regulations that are consistent with the actions of the international fishery organization, for approval and implementation under the Magnuson-Stevens Act.

The Council's recommended protocol describing its role in the management of international fisheries contained in Amendment 14 was premature and did not include all the parties required pursuant to the new legislation. It would have been inconsistent with the 503(f) provisions to agree to such a protocol at this time; therefore, it was not approved. In light of the ongoing development of the MOU required under the WCPFCIA, the Council's proposed protocol is no longer necessary. However, should the Council wish to establish such a protocol in the FMP, it would have to be consistent with the controlling provisions of the MOU.

#### **Domestic Permit and Reporting Recommendations**

Amendment 14 recommended the establishment of a Federal permit and data collection program for Hawaii-based non-longline commercial pelagic fisheries. National Standard 7 of the Magnuson-Stevens Act mandates that management measures, where practicable, minimize costs and avoid unnecessary duplication. The permitting and data collection measures proposed in Amendment 14 would have

been duplicative, and unnecessary in light of existing State of Hawaii permitting and catch and effort reporting programs. The state requires every commercial fisherman (operators and crew members) to have a current Commercial Marine Licenses (CML) issued annually by the Hawaii Department of Land and Natural Resources, Division of Aquatic Resources (HDAR). This requirement applies to fishermen who fish in the EEZ, as well as state waters. Each charter fishing vessel operator and crew member is also required by the State to have CMLs (charter fishing clients are not required to have a license).

State-licensed fishermen are required to report catch and effort on a monthly or trip basis to HDAR on forms provided by HDAR. (Federally-permitted commercial longline fishermen are exempt from the State reporting requirement because they report to NMFS on Federal logbooks, which are accepted by the HDAR as fulfilling the state reporting requirement.) Federal permits and logbooks would be redundant to the state's CML and logbooks. These redundant requirements would add an unnecessary burden on fishermen, and likely decrease compliance with both the State's management program and any potential Federal program. Thus, the permit and data collection measures proposed in Amendment 14 are inconsistent with National Standard 7.

A more cost-effective and non-duplicative management strategy for the small boat commercial pelagic fishery in Hawaii is to work collaboratively with the State to enhance and improve the state's fishing permit and reporting requirements, and continue the State-Federal data sharing agreement that has been in place since 1988. This approach would eliminate redundancy and the burden on fishermen of separate Federal permit and logbook requirements. Instead, NMFS would rely on the HDAR's processes and staff to continue to process the existing commercial fishing reports, and NMFS would continue to obtain necessary catch and effort data via the existing data exchange agreement.

A cooperative state-Federal system of permitting and reporting for non-

longline pelagic fisheries would simplify enforcement, would provide the necessary fisheries information required for stock assessment and fishery management, and would provide a non-confusing and non-duplicative burden on the fishing public.

To this end, NMFS PIR staff has begun to work jointly with staffs of the NMFS Pacific Islands Fisheries Science Center, Council, and HDAR to enhance the State's permitting and data collection program for small-boat pelagic commercial fisheries. This effort is intended to ensure that data to manage the small-boat commercial pelagic fisheries around Hawaii are collected in a cost-effective and non-duplicative manner.

#### **Section 304(i) and Domestic Measures**

As part of the Section 304(i) obligations discussed above, the Council is required to submit recommendations to address the relative impact of fishing vessels of the United States. As stated in the proposed rule (72 FR 14761), existing measures have been implemented to address the relative impact of U.S. fishing vessels within the meaning of section 304(i). While additional measures, such as those proposed in Amendment 14 may be submitted to strengthen the domestic management program, they must be consistent with existing law to be implemented. If the Council wishes to propose additional permitting and data collection requirements, it must be done in a manner consistent with the considerations discussed above.

As a result of not approving the underlying provisions in Amendment 14, NMFS will not publish a final rule to implement Federal permits and reporting requirements for the Hawaii-based non-longline commercial pelagic fishery. NMFS hereby withdraws the proposed rule (72 FR 14761, March 29, 2007).

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

Dated: June 11, 2007.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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