

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements the accession of Taiwan to the World Trade Organization Government Procurement Agreement. This action is necessary because the designation of Taiwan under the World Trade Organization Government Procurement Agreement took effect on July 15, 2009. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

252.212-7001 [Amended]

2. Section 252.212-7001 is amended as follows:

a. By revising the clause date to read "(NOV 2009)"; and

b. In paragraph (b)(11) by removing "(12JUL 2009)" and adding in its place "(NOV 2009)".

3. Section 252.225-7021 is amended by revising the clause date and paragraph (a)(3)(i) to read as follows:

252.225-7021 Trade Agreements.

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TRADE AGREEMENTS (NOV 2009)

(a) * * *

(3) * * *

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and

Matsu" (Chinese Taipei)), or the United Kingdom);

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- 4. Section 252.225-7045 is amended as follows:
a. By revising the clause date; and
b. In paragraph (a), in the definition of "Designated country", by revising paragraph (1) to read as follows:

252.225-7045 Balance of Payments Program—Construction Material Under Trade Agreements.

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BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (NOV 2009)

(a) * * *

"Designated country" means—

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(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu" (Chinese Taipei)), or the United Kingdom);

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 0907231161-91399-02]

RIN 0648-AY08

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Longline and Purse Seine Fisheries in the Eastern Pacific Ocean in 2009, 2010, and 2011

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

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act of 1950 (Act) to implement a decision of the Inter-American Tropical Tuna Commission (IATTC). That decision requires, among other things, that

members of the IATTC, including the United States, ensure that catches in the eastern Pacific Ocean (EPO) of bigeye tuna (*Thunnus obesus*) by longline vessels greater than 24 meters in length do not exceed specified levels in each of the years 2009, 2010, and 2011, and that purse seine vessels class size 4-6 do not fish in the EPO during established closure periods. This action is necessary for the United States to satisfy its obligations under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), to which it is a Contracting Party.

DATES: These regulations become effective on November 21, 2009.

ADDRESSES: Copies of supporting documents that were prepared for this final rule, including the environmental assessment (EA) and proposed rule, are available via the Federal e-Rulemaking portal, at <http://www.regulations.gov>. Those documents are also available from the Regional Administrator, Rodney R. McInnis, NMFS Southwest Regional Office, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802. The initial regulatory flexibility analysis (IRFA) and final regulatory flexibility analysis (FRFA) prepared for this rule are included in the proposed rule and this final rule, respectively.

FOR FURTHER INFORMATION CONTACT: Heidi Hermsmeyer, NMFS SWR, 562-980-4036.

SUPPLEMENTARY INFORMATION:

On October 19, 2009, NMFS published a proposed rule in the **Federal Register** (74 FR 53455) that would revise regulations at 50 CFR part 300, subpart C, in order to implement certain decisions of the IATTC. The proposed rule was open to public comment through November 9, 2009.

As a Contracting Party to the Convention and a Member of the IATTC, the United States is legally bound to implement the decisions of the IATTC. The Act (16 U.S.C. 951-961 and 971 *et seq.*) authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard (USCG) is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the IATTC. The authority to promulgate regulations has been delegated to NMFS.

At its Eightieth Meeting, in June 2009, the IATTC adopted the Resolution on a Multiannual Program for the Conservation of Tuna in the Eastern

Pacific Ocean in 2009–2011 (Resolution C–09–01) related to bigeye and yellowfin tunas (*Thunnus albacares*) in the EPO. The resolution, available with other decisions of the IATTC at <http://www.iattc.org/ResolutionsActiveENG.htm>, places certain obligations on the IATTC's High Contracting Parties, Cooperating Non-Parties, Cooperating Fishing Entity, and Regional Economic Integration Organization (collectively, CPCs).

The proposed rule includes further background information, including information on the Convention and the IATTC, the international obligations of the United States under the Convention, the provisions of Resolution C–09–01, and the basis for the proposed regulations.

New Requirements

This final rule establishes the following requirements:

(1) 500 mt Bigeye Tuna Quota in the Longline Fishery

The bigeye tuna limits established in Resolution C–09–01 are termed “catch” limits. The annual limit on harvests by large-scale longline vessels covers all bigeye tuna that is retained on board, as opposed to all bigeye tuna caught. Accordingly, this rule establishes a limit of 500 mt of bigeye tuna that is caught and retained. The limit has the purpose of reducing fishing mortality of EPO bigeye tuna. Once NMFS determines in any of the years 2009, 2010, or 2011 that the limit is expected to be reached by a specific future date in that year, NMFS would publish a notice in the **Federal Register** announcing that the limit is expected to be reached and that specific restrictions will be effective on that particular date until the end of the calendar year. NMFS would publish the notice at least seven calendar days before the effective date of the restrictions to provide fishermen advance notice of the restrictions. NMFS would also endeavor to make publicly available, such as on a website, regularly updated estimates and/or projections of bigeye tuna landings in order to help fishermen plan for the possibility of the limit being reached. In Resolution C–09–01, the IATTC has reserved the option of reversing or amending its adoption of the bigeye tuna catch limits in longline fisheries at its regular annual session in June 2011. If such a decision occurs, NMFS will take appropriate action to rescind any

closed areas that are established by regulation.

Starting on the announced date and extending through the last day of that calendar year, it would be prohibited to use a U.S. fishing vessel greater than 24 meters in length to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear. Bigeye tuna caught incidentally in the longline fishery starting on the announced date (e.g., in the shallow-set longline fishery targeting swordfish) would be required to be discarded. Any bigeye tuna already on board an applicable longline fishing vessel upon the effective date of the restrictions may be retained on board, transshipped, and/or landed, provided that they are landed within 14 days after the restrictions become effective. In the case of a vessel that has declared to NMFS pursuant to 50 CFR 665.23(a) [applicable to the Hawaii-based longline fishery] that the current trip type is shallow-setting, the 14-day limit would be waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the restrictions, as recorded by the NMFS observer on board the vessel. Starting on the announced date and extending through the last day of that calendar year, it would also be prohibited to transship bigeye tuna caught in the Convention Area by a longline vessel greater than 24 meters in length to any vessel other than a U.S. fishing vessel operating in compliance with a valid permit issued under 50 CFR 660.707 or 665.21.

These restrictions do not apply to bigeye tuna caught by longline vessels 24 meters in length or less, or to longline gear used outside of the Convention Area, such as in the western and central Pacific Ocean. However, to help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, there are two additional, related, prohibitions that would be in effect starting on the announced date and extending through the last day of that calendar year. First, it would be prohibited to fish with a large-scale longline vessel that was declared to be on a deep-set longline trip, pursuant to 50 CFR 665.23(a), both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the

vessel, unless on a declared shallow-setting trip, would still be required to land any bigeye tuna taken within the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a large-scale longline vessel on a declared deep-set longline trip, pursuant to 50 CFR 665.23(a), is used to fish outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area.

(2) EPO Closure in the Purse Seine Fishery

The rule prohibits fishing in the EPO by all U.S. purse seine vessels class size 4–6 for a period of 59 days in 2009, 62 days in 2010, and 73 days in 2011. For 2009, the closure is from November 21, 2009, to January 18, 2010. For 2010, the closure is from November 18, 2010, to January 18, 2011. For 2011, the closure is from November 7, 2011, to January 18, 2012. Notwithstanding the general prohibition on fishing during the closure period, a class size 4 vessel is allowed to make one single fishing trip of up to 30 days duration during the specified closure periods, provided that any such vessel carries an observer. In Resolution C–09–01, the IATTC has reserved the option of reversing its adoption of the closure at its regular annual meeting in June 2011. If such a decision occurs, NMFS would initiate rulemaking to implement the IATTC decision.

(3) Closure Area to the West of the Galapagos Islands in the Purse Seine Fishery

This rule also establishes an additional area closed to fishing for skipjack (*Katsuwonus pelamis*), bigeye, and yellowfin tunas by U.S. purse seine vessels class size 4–6 from September 29 to October 29 in 2010, and 2011. The area is a rectangle to the west of the Galapagos Islands and was chosen due to the high levels of juvenile bigeye tuna catch by purse seiners in the area. The area is between 96° and 110° W. longitude and between 4° N. and 3° S. latitude in the Convention Area and is depicted in Figure 1. Purse seine vessels class size 4–6 may transit the closed areas with all fishing gear stowed in a manner so as not to be readily available for fishing.

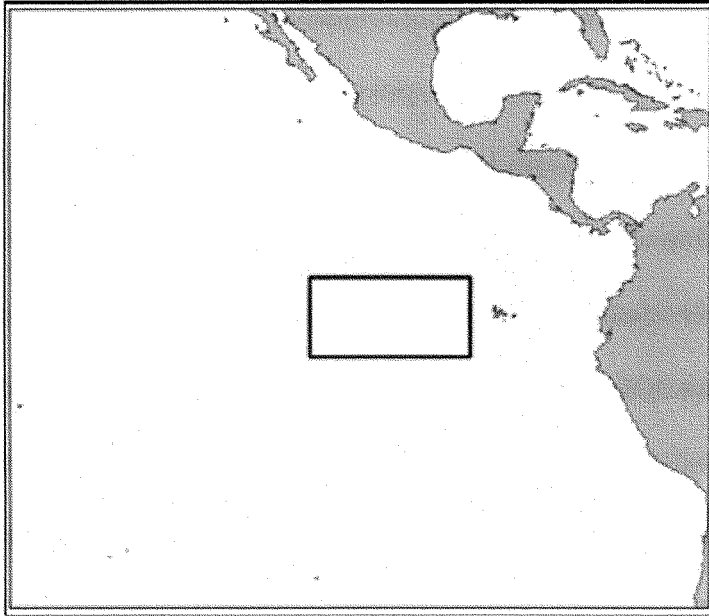


Figure 1 – Purse Seine Closure Area. The area that is closed to purse seine fishing is the high seas area within the rectangle bounded by the bold black lines. The lines on this map are for illustrative purposes only and are not necessarily to scale.

(4) Tuna Retention in the Purse Seine Fishery

Purse seine vessels will also continue to be required to retain and land all skipjack, bigeye, and yellowfin tunas; however, there are some minor changes to the existing regulations at 50 CFR 300.24(e) and 300.25(e)(1). The regulations are being amended to be consistent with IATTC Resolution C-09-01, so the catch retention measure is now only applicable to purse seine vessels class size 4-6, and the exception to the tuna retention measure is being adjusted accordingly. Tuna is required to be retained for fish considered unfit for human consumption for reasons other than size, and the single exemption of this is the final set of a trip, when there may be insufficient well space remaining to accommodate all the tuna caught in that set. The regulatory language was slightly different than this but with similar intent, so the amendment will not result in any significant changes to the purse seine fishery. The catch retention requirement will remain in effect through December 31, 2011. In Resolution C-09-01, the IATTC has reserved the option of reversing its adoption of the catch retention measure at its regular annual session in 2010. If such a decision occurs, NMFS would

take appropriate action to rescind the tuna retention provision.

Response to Comments

There was a 20-day public comment period during which comments could be submitted electronically via the Federal e-Rulemaking portal, at <http://www.regulations.gov>, or by mail. There was also a public hearing held on October 21, 2009, from 9 a.m. to 12 p.m. NMFS received one letter from staff of the Western Pacific Regional Fishery Management Council during the public comment period that included several substantive comments, which are summarized below. No other comments were received. No one attended the public hearing.

Comment 1: Shallow-set vessels should be exempted from the proposed regulations that would prohibit longline fishing in the EPO and WCPO on the same trip. On average, 17 bigeye are caught per trip by the Hawaii-based shallow-set longline fleet whereas an average of 250 swordfish are caught per trip. It is clear that shallow-set longline fishing can target swordfish without catching much bigeye tuna, and given that approximately 75 percent of tuna caught on longline gear can be discarded alive, the final rule should be revised to allow shallow-set longline

fishing outside of the Convention Area on the same trip.

Response: Once the limit is reached, the provisions to: (1) Prohibit fishing in the Convention Area and the WCPO during the same trip, and (2) require that fishing gear be stowed while the vessel is in the Convention Area during a trip in which fishing takes place in the WCPO, help provide effective mechanisms to enforce this rule. Both would substantially improve the likelihood of compliance with, and the ability to enforce, the more fundamental requirements of the rule. Specifically, both prohibitions are designed to ensure that vessels that are fishing in the WCPO and the Convention Area do not make longline sets in the Convention Area and retain bigeye tuna from those sets after the limit established by this rule is reached. It is important to retain these provisions for the deep-setting trips since these vessels are only subject to about 20 percent observer coverage and generally target bigeye tuna. However, NMFS acknowledges that these two prohibitions should not apply to vessels on declared shallow-setting trips pursuant to 50 CFR 665.23(a), since swordfish are being targeted, the amount of bigeye tuna discards would be minimal, and the fishery is subject to 100 percent observer coverage. Accordingly, the proposed rule has been

modified in this final rule such that the two prohibitions do not apply to shallow-set longline vessels.

Comment 2: The proposed rule states that bigeye tuna are subject to overfishing and overfished in the EPO. While this may be true according to the stock assessment prepared by the staff of the IATTC, bigeye tuna is considered a pan-Pacific stock, and on a stock wide basis it is not considered overfished in terms of the Magnuson-Stevens Act (MSA). NMFS's Draft EA (October 2009) associated with the proposed rule acknowledges this in Section 3.3.2.1 (pg. 28).

Response: The proposed rule stated that IATTC Resolution C-09-01 was based on the stock assessment conducted by IATTC scientists in May 2009, which concluded that the bigeye stock in the EPO was both subject to overfishing and in an overfished state. While the resolution was based on the stock assessment for bigeye in the EPO conducted by IATTC scientists, NMFS's 2009 Status of U.S. Fisheries Third Quarter Update recognizes one stock of bigeye in the Pacific Ocean and has determined that the stock is subject to overfishing, but not in an overfished condition.

Comment 3: The proposed rule and Draft EA do not identify the catch limits provided to Japan, Korea, Taiwan, and China under the IATTC Resolution (C-09-01) for which the 500 mt limit for U.S. longline vessels over 24 m is derived. The public should be provided this information because it adds context to the relative impact of U.S. longline fisheries on the bigeye resource in the EPO. The total annual catch limits established by the resolution for vessels greater than 24 m in length of bigeye tuna caught in the EPO are as follows for 2009 and 2010, respectively: China—2,533 mt and 2,507 mt; Japan—32,713 mt and 32,372 mt; Korea—12,073 mt and 11,947 mt; and Chinese Taipei 7,635 mt and 7,555 mt.

Response: NMFS acknowledges this comment.

Comment 4: In the draft EA (pg. 61), NMFS acknowledges that it is very unlikely that the 500 mt catch limit applicable to the U.S. longline fishery in the EPO would be reached in 2009, 2010, or 2011. If this is true, why is NMFS going through rulemaking to implement a catch limit that has no realistic possibility of being reached?

Response: While it is unlikely, based on current projections of bigeye catch in the EPO by large-scale longline vessels, that the 500 mt catch limit will be reached in any each of the years 2009–2011, it is a possibility; therefore, NMFS is implementing these regulations so

that it can satisfy its international obligations should catches increase in the EPO and the limits be reached in any given year. In addition, NMFS is taking extra precautions in this situation because NMFS is also proposing to establish catch limits for bigeye tuna caught in the WCPO by longline vessels in 2009–2011 in order to implement a decision of the Western and Central Pacific Fisheries Commission (WCPFC) (FR 32521, July 8, 2009), thus there is a potential for vessels to shift more effort into the Convention Area should the catch limit in the WCPO be reached in any given year.

Comment 5: Page 23 of the Draft EA includes a table (Table 3–4) that indicates that 54 Hawaii longline vessels less than 24 m in length engaged in shallow-set fishing in 2005, 16 in 2006, 61 in 2007, and 84 in 2008. This is incorrect.

Response: Table 3–4 in the Draft EA should have shown that 54 Hawaii longline vessels less than 24 m in length engaged in deep-set fishing in 2005, 16 in 2006, 61 in 2007, and 84 in 2008. Table 3–4 in the Final EA has been adjusted accordingly.

Changes From the Proposed Rule

As described in the response to comment 1, § 300.24(b)(4)(iii) and (iv) were revised to allow longline vessels that shallow-set to continue fishing inside and outside of the Convention Area during the same fishing trip during a closure provided that no bigeye harvested in the Convention Area are retained.

In the final regulations, § 300.21, “Definitions”, the definition of a “fishing trip” was revised to be consistent with the definition of a fishing trip used in the regulations to implement the WCPFC at § 300.211.

In the final regulations, § 300.25, “Eastern Pacific fisheries management”, the subparagraphs of paragraph (b)(4) were renumbered for clarity.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act and other applicable laws.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this entire final rule. Compliance with the 30-day requirement would be impracticable and contrary to the public interest. If we did not waive the 30-day delay, the EPO closure period in the purse seine fishery would only be in effect for about half of the specified period in 2009, meaning that NMFS would not completely satisfy the international obligations of the

United States under the Convention. This would be contrary to the public interest because bigeye tuna are currently subject to overfishing, and this rule has the objective of limiting or reducing the fishing effort in U.S. fisheries targeting bigeye tuna in the EPO. The United States also had limited notice of the need to implement Resolution C-09-01, which was adopted ad referendum at the regular annual meeting of the IATTC in June 2009, but was not fully adopted by the Commission until Colombia joined the consensus on July 15, 2009. Under the Tuna Conventions Act, the United States cannot implement decisions made by the Commission unless they are adopted by consensus. To help keep the regulated community informed of the potential for a purse seine closure in 2009, NMFS advised affected purse seine vessel managers and owners of the proposed November 21, 2009–January 18, 2010 purse seine closure soon after the IATTC Resolution was adopted in July 2009. NMFS also held a public hearing on October 21, 2009, and solicited public comments on the proposed rule during a 20-day public comment period. In addition, NMFS sent the proposed rule directly to purse seine vessel managers and owners in October 2009 so they would be aware of, and prepared for, the proposed closure period slated to begin on November 21, 2009. Therefore, NMFS finds that there is good cause to waive the 30-day delay in effectiveness in this circumstance.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA prepared for the proposed rule (74 FR 53455; October 19, 2009) and a summary of the analyses completed to support the action. No public comments were received on the IRFA. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble and summary section of the proposed rule. There are no disproportionate economic impacts between small and large vessels resulting from this rule. Furthermore, there are no disproportionate economic impacts from this rule based on vessel size, gear, or homeport. There are no new recordkeeping or reporting requirements associated with this rule. Other compliance requirements are described in the IRFA. This rule is issued under authority of the Tuna Conventions Act.

Description of Small Entities to Which the Rule Will Apply

This rule applies to owners and operators of U.S. longline vessels over 24 meters length overall, and U.S. purse seine vessels class size 4–6 fishing for yellowfin, bigeye, and skipjack tunas in the Convention Area. The total number of affected longline vessels is approximated by the average number of U.S. large-scale longline vessels that have caught bigeye tuna in the EPO in 2005–2008. In each of the years 2005 through 2008, the number of large-scale longline vessels that caught bigeye in the EPO were 18, 8, 18, and 30, respectively. Thus approximately 19 longline vessels on average are likely to be affected by this proposed rule, if adopted. The majority of the longline vessels that may be affected by this proposed rule are based out of Hawaii and American Samoa. There is also one longline vessel based out of California that would be affected by the proposed rule. These longline vessels target bigeye tuna using deep sets, and during certain parts of the year, portions of the Hawaii and American Samoa fleet target swordfish using shallow sets. As an indication of the size of businesses in the fishery, average annual fleet-wide ex-vessel revenues during 2005–2007 were about \$60 million. Given the number of vessels active during that period (127, on average), this indicates an average of about \$500,000 in annual revenue per vessel, thus all of the businesses affected by the longline measures would be considered small business entities. It is estimated that even with a large increase in the catch rates of bigeye tuna in the EPO the 500 mt catch limit would not be reached in any of the applicable years (2009–2011).

The total number of affected purse seine vessels is approximated by the current number of U.S. purse seine vessels class size 4–6 authorized to fish in the IATTC Convention Area. As of July 2009, there were five U.S. purse seine vessels listed on the IATTC Vessel Register; two are class size 5 (273 to 363 mt carrying capacity) and three are class size 6 (greater than 363 mt carrying capacity). Purse seine vessels class size 5 would be considered small business entities (revenues equal to or less than \$4 million per year). It is estimated that from 2004–2008, the majority, if not all, class size 5 U.S. purse seine vessels have had revenues of less than \$0.5 million per year. Class size 6 vessels are categorized as large business entities (revenues in excess of \$4 million per year). A large purse seine vessel typically generates about 4,000 to 5,000

mt of tuna valued at about \$4 to \$5 million per year.

It is estimated that purse seine sets would be prohibited for 16 percent of the year in 2009 (59 day closure/365 days), 17 percent of the year in 2010 (61 day closure/365 days), and 20 percent of the year in 2011 (73 day closure/365 days), thus catches would be expected to be affected accordingly; however, the affected vessels are capable of fishing outside of the closure area (i.e., in the WCPO) during the closure period and/or for the remainder of the year, since the fishery continues year round, and vessels tend to use relatively short closures (such as these) for regular vessel maintenance. It may not be economically viable for the class size 5 purse seine vessels to register under the SPTT and fish in the WCPO because of their smaller carrying capacity and the increased costs associated with fishing far from port. At least one of the class size 5 vessels would not be able to register to fish in the WCPO because only one license is currently available.

Steps Taken To Minimize the Economic Impact on Small Business Entities

NMFS compared the effects of the proposed rule and various alternatives to the proposed rule on small business entities. For the longline fishery, an economic impact is not anticipated under the preferred alternative since the quota is unlikely to be met in any of the applicable years; however, NMFS considered the following alternatives. One of the alternatives would have prohibited all longline fishing in the Convention Area once the limit is reached, rather than just prohibiting the retention, transshipment, and landing of bigeye tuna caught in the Convention Area. The other alternative would have prohibited deep-set longline fishing in the Convention Area once the limit is reached, allowing shallow-set longline fishing in the Convention Area to continue, provided that no bigeye tuna and no yellowfin tuna caught in the Convention Area are retained, transhipped, or landed.

For the EPO purse seine closure, NMFS considered one alternative for each applicable year which differs from the rule in terms of when the closure is implemented. However, based on catch data from 2004–2009, small entities have historically made more tuna landings in the EPO during the alternatives' closure periods (July through September) compared to the closure period in the rule (November through January). Thus, for each year the alternative would not minimize the economic impact on small entities compared to the preferred alternative.

There were no alternatives for the 30-day purse seine closure to the west of the Galapagos from 2009–2011 and for the tuna retention measure which would accomplish the stated objectives of Resolution C–09–01 and which would minimize any significant economic impact on the affected small entities.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, one small entity compliance guide was prepared for the affected small business entities in the longline fishery, and one was prepared for the affected small business entities in the purse seine fishery. Copies of this final rule and the compliance guides are available from the Southwest Regional Office (see **ADDRESSES**) and on the following Web site: <http://swr.nmfs.noaa.gov/>. The purse seine guide will be sent to all holders of permits for the purse seine fishery that are authorized by the IATTC to fish in the Convention Area, and the longline guide will be sent to all holders of permits for the longline fishery that have large-scale longline vessels. Copies of the guide and final rule will also be available upon request.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: November 18, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 300, subpart C is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS**Subpart C—Eastern Pacific Tuna Fisheries**

■ 1. The authority citation for 50 CFR part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951–961 *et seq.*

■ 2. In § 300.21, the definition of “Fishing trip” is revised and a definition of “Longline gear” is added, in alphabetical order, to read as follows:

§ 300.21 Definitions.

* * * * *

Fishing trip means a period that a fishing vessel spends at sea between port visits and during which any fishing occurs.

* * * * *

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nautical mile in length, is suspended horizontally in the water column anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

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■ 3. In § 300.24, paragraph (e) is revised, and new paragraphs (k) through (n) are added to read as follows:

§ 300.24 Prohibitions.

* * * * *

(e) Fail to retain any bigeye, skipjack, or yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 using purse seine gear in the Convention Area, except fish considered unfit for human consumption due to reasons other than size, and except on the last set of the trip if there is insufficient well capacity to accommodate the entire catch.

* * * * *

(k) Use a fishing vessel over 24 meters in length to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area or to fish in contravention of § 300.25(b)(4)(i) or (ii).

(l) Use a fishing vessel over 24 meters in length to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area on the same fishing trip in contravention of § 300.25(b)(4)(iii).

(m) Fail to stow gear as required in § 300.25(b)(4)(iv) or (f)(3).

(n) Use a fishing vessel of class size 4–6 to fish with purse seine gear in the Convention Area in contravention of § 300.25(f)(1) or (2).

■ 4. In § 300.25, paragraphs (b) and (e)(1) are revised, and paragraph (f) is added to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(b) *Tuna quotas in the longline fishery in the EPO.* (1) Fishing seasons for all tuna species begin on January 1 and end either on December 31 or when NMFS closes the fishery for a specific species.

(2) For each of the calendar years 2009, 2010, and 2011, there is a limit of

500 metric tons of bigeye tuna that may be captured and landed by longline gear in the Convention Area by fishing vessels of the United States that are over 24 meters in length.

(3) NMFS will monitor bigeye tuna landings with respect to the limit established under paragraph (b)(2) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit in any year is expected to be reached by a specific future date, and at least 7 calendar days in advance of that date, NMFS will publish a notice in the **Federal Register** announcing that the limit has been reached and that the restrictions described in paragraph (b)(4) of this section will be in effect through the end of the calendar year.

(4) Once an announcement is made pursuant to paragraph (b)(3) of this section, the following restrictions will apply during the period specified in the announcement:

(i) A fishing vessel of the United States over 24 meters in length may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(A) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective.

(B) In the case of a vessel that has declared to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, the 14-day limit is waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the prohibitions, as recorded by the NMFS observer on board the vessel.

(ii) Bigeye tuna caught by longline gear used on a vessel of the United States over 24 meters in length in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(iii) A fishing vessel of the United States over 24 meters in length, other than a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the

prohibitions were put into effect as announced under paragraph (b)(3) of this section.

(iv) If a fishing vessel of the United States over 24 meters in length, other than a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

* * * * *

(e) *Bycatch reduction measures.* (1) Bigeye, skipjack, and yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) using purse seine gear must be retained on board and landed, except fish deemed unfit for human consumption for reasons other than size from 0000 hours on January 1, 2010 to 2400 hours on December 31, 2011. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire catch.

* * * * *

(f) *Purse seine closures in the EPO.* (1) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area from 0000 hours on November 21, 2009, to 2400 hours on January 18, 2010; from 0000 hours on November 18, 2010, to 2400 hours on January 18, 2011; and from 0000 hours on November 7, 2011, to 2400 hours on January 18, 2012, except that a vessel of class size 4 (182 to 272 metric tons carrying capacity) may make one fishing trip of up to 30 days duration during the specified closure period, provided that the vessel carries an observer of the On-Board Observer Program of the Agreement on the International Dolphin Conservation Program during the entire fishing trip.

(2) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on September 29 to 2400 hours on October 29 in the years 2010 or 2011 to fish with purse seine gear within the area bounded at

the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude.

(3) At all times while a vessel is in a Closed Area established under paragraphs (f)(1) or (f)(2) of this section,

the fishing gear of the vessel shall be stowed in a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible

for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured.

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