

TABLE B-2—IIHS INITIAL ROUND OF TESTING—INJURY MEASURES OF DUMMIES IN FRONT SEATING POSITIONS OF THE MALIBU

Test			Head resultant acceleration (g)	Head injury criterion (15 ms)	Chest resultant acceleration (3 ms clip, g)	Chest displacement (mm)	Left femur force (kN)	Right femur force (kN)
Injury Assessment Reference Values .....				700	60 g	63 mm	10(kN)	10(kN)
Full-width ...	Hyundai .....	Driver .....	128	754	21	19	0.3	0.3
		Passenger	107	557	14	20	0.1	0.1
	Wabash .....	Driver .....	54	328	36	38	2.2	1.2
		Passenger	50	319	36	37	2.3	1.8
	NCAP (rigid wall).	Driver .....	49	330	43	40	2.0	1.2
		Passenger	55	389	42	32	0.5	0.8

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

**Raymond R. Posten,**  
Associate Administrator for Rulemaking.  
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

[Docket No. 150122068-5068-01]

RIN 0648-BE84

**International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Effort and Catch Limits and Other Restrictions and Requirements**

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

**ACTION:** Proposed rule; proposed specifications.

**SUMMARY:** NMFS proposes and seeks comments on a proposed rule and proposed specifications to be issued under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act). The proposed rule would establish a framework under which NMFS would specify limits on fishing effort and catches, as well as spatial and temporal restrictions on particular fishing activities and other requirements, in U.S. fisheries for highly migratory fish species in the western and central Pacific Ocean (WCPO). NMFS would issue the specifications as needed to implement conservation and management measures adopted by the Commission for the

Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC). The proposed rule also would require that certain U.S. fishing vessels operating in the WCPO obtain “IMO numbers.” The proposed rule also includes changes to regulations regarding tuna catch retention requirements for purse seine vessels, requirements to install and carry vessel monitoring system (VMS) units, daily reporting requirements, and other changes that are administrative in nature.

Using the proposed regulatory framework described above, NMFS proposes restrictions on the use of fish aggregating devices by purse seine vessels in 2015.

These actions are necessary to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, to which it is a Contracting Party.

**DATES:** Comments on the proposed rule or proposed specifications must be submitted in writing by August 7, 2015.

**ADDRESSES:** You may submit comments on the proposed rule, proposed specifications, and the regulatory impact review (RIR) prepared for the proposed rule and proposed specifications, identified by NOAA-NMFS-2015-0072, by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.
  1. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2015-0072](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2015-0072),
  2. Click the “Comment Now!” icon, complete the required fields, and
  3. Enter or attach your comments.

—OR—  
• *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands

Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

An initial regulatory flexibility analysis (IRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the RIR and the programmatic environmental assessment (PEA) prepared for National Environmental Policy Act (NEPA) purposes are available at [www.regulations.gov](http://www.regulations.gov) or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Tom Graham, NMFS PIRO, 808-725-5032.

**SUPPLEMENTARY INFORMATION:**

**Background on the Convention**

The Convention on the Conservation and Management of Highly Migratory

Fish Stocks in the Western and Central Pacific Ocean (Convention) focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO. To accomplish this objective, the Convention established the Commission, which includes Members, Cooperating Non-members, and Participating Territories. The United States of America is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States is obligated to implement conservation and management measures adopted by the Commission and other decisions of the Commission. The WCPFC Implementation Act (16 U.S.C. 6901 *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 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 Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC Web site at: [www.wcpfc.int/doc/convention-area-map](http://www.wcpfc.int/doc/convention-area-map).

### Implementation of Commission Decisions

To date NMFS has implemented the Commission's decisions through regulations establishing specific requirements, restrictions, and prohibitions. This proposed rule includes several such specific regulations, and it also includes more general regulations that would establish a framework within which NMFS could

establish specific requirements and restrictions. Under the framework, NMFS would issue and seek public comment on proposed specifications through announcements in the **Federal Register**, and subsequently issue final specifications through announcements in the **Federal Register**. The specifications would be designed to satisfy the obligations of the United States with respect to particular provisions of conservation and management measures adopted by the Commission. The specifications could include fishing effort limits, catch limits, and other restrictions on particular fishing activities during specific periods and/or in specific areas.

This proposed action is described in the following sections under four categories. The first three categories are regulatory changes, and include: (1) Framework to implement Commission decisions; (2) requirement to obtain IMO number; and (3) other regulatory changes. The last category proposes specifications for the purse seine fishery for 2015; specifically: (4) purse seine fish aggregation device (FAD) restrictions.

### Regulatory Changes

This proposed rule includes several elements, described in detail below, that would be included in the regulations at 50 CFR part 300 Subpart O under three categories. The first would establish a framework to implement Commission decisions, the second would require that certain fishing vessels be issued IMO numbers, and the third would make changes to several existing regulations to implement Commission decisions, some of which are administrative in nature.

#### 1. Framework To Implement Commission Decisions

The proposed rule would establish a framework under which NMFS would specify fishing effort limits, catch limits, and other restrictions and requirements in U.S. fisheries for HMS in the Convention Area to implement particular decisions of the Commission. The framework would not be used to implement all Commission decisions, but rather those that are amenable to the framework process, such as quantitative fishing effort limits and catch limits, and spatial and/or temporal restrictions on specific fishing activities. For the purpose of describing the proposed framework, all such restrictions and requirements are called "limits."

*Purpose of framework:* The purpose of a framework is to make it possible to manage fisheries more responsively under conditions requiring "real time"

management. Such conditions exist in the context of the Convention because the Commission makes decisions that must be implemented by its members quickly—often within 60 days of the decision. The framework proposed here would allow NMFS to implement Commission decisions more rapidly than it would be able to without such a framework. The proposed framework, which would be codified at 50 CFR part 300, subpart O, contains the parameters within which NMFS could take specific actions, including the types of actions it could take, as well as the procedures for doing so. Limits implemented by NMFS under the proposed framework, called "specifications," would be announced in the **Federal Register**. Except when warranted and allowed by law, specifications would be subject to prior public notice and comment. The limits specified under the framework would likely, but not always, be time-limited.

*Types and details of limits:* The types of limits that would be specified under the framework include quantitative limits on the weight or number of fish that may be caught, retained, transshipped, landed, and/or sold; quantitative limits on the amount of fishing effort that may be expended, such as in terms of amounts of time vessels spend at sea or engaged in fishing or engaged in particular fishing activities or other measures of fishing effort, such as the number of gear sets or deployments of gear; and restrictions or prohibitions on particular fishing activities in certain areas and/or periods.

Most recent Commission decisions do not apply in territorial seas or archipelagic waters. Accordingly, the framework regulations would state that any specified limit would not—unless otherwise indicated in the specification—apply in the territorial seas or archipelagic waters of the United States or any other nation, as defined by the domestic laws and regulations of that nation and recognized by the United States. If a Commission decision does apply in territorial seas and/or archipelagic waters, the specification issued by NMFS to implement that decision would specify that it does apply in those areas.

For each limit specified under the framework, NMFS would identify the area and period in which it applies, and as appropriate, the vessel types, gear types, species, fish sizes, and any other relevant attributes to which it applies. For spatial or temporal limits, NMFS would also specify the specific activities that would be restricted in the area or period, and for quantitative limits, NMFS would specify the restrictions

and requirements that would go into effect after the limit is reached and the applicable dates of those restrictions and requirements. These restrictions and requirements could include a prohibition on the catch, retention, transshipment and/or landing of specific species or specific sizes of specific species, a prohibition on the use of specific fishing gears or methods, restrictions on specific fishing activities, and reporting or other requirements.

*Fisheries affected:* In the decisions of the Commission, the three Participating Territories of the United States—American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam—often are treated separately from the United States. For example, the fisheries of the territories often are subject to different controls and limits than are the fisheries of the United States. Therefore, to implement the Commission decisions, it is necessary to distinguish the fisheries from each other because fishing vessels from the Participating Territories are flagged vessels of the United States. The proposed regulatory framework would include criteria to distinguish the fisheries from each other, for the purpose of attributing fishing effort and catch among the fisheries, and determining to which vessels a given restriction applies. The proposed criteria mirror those used in previous regulations issued under the WCPFC Implementation Act. Under the proposed criteria, all fishing activities by U.S. fishing vessels would be considered to be part of a fishery of the United States except as follows:

1. Except as provided under paragraphs 2 and 3 below, if catch is landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, the catch and associated fishing effort are considered part of a fishery of the territory in which it is landed, provided that: (a) It was not caught using purse seine gear; (b) it was not caught in any portion of the U.S. exclusive economic zone (EEZ) other than the portion of the U.S. EEZ surrounding the territory in which it was landed; and (c) it was landed by a fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

2. Except as provided under paragraph 3 below, if catch is made by longline gear by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under 50 CFR 665.801(c), the catch and associated fishing effort are considered part of a fishery of American Samoa, provided that: (a) It was not caught in any portion of the U.S. EEZ other than

the portion of the U.S. EEZ surrounding American Samoa; and (b) it was landed by a fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

3. If catch or fishing effort is made by a vessel that is included in a specified fishing agreement under 50 CFR 665.819(c), the catch and associated fishing effort are considered part of a fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, according to the terms of the agreement to the extent the agreement is consistent with 50 CFR 665.819(c) and other applicable laws, provided that: (a) The start date specified in 50 CFR 665.819(c)(9)(i) has occurred or passed; and (b) NMFS has not made a determination under 50 CFR 665.819(c)(9)(iii) that the catch or fishing effort exceeds any limit allocated to the territory that is a party to the agreement.

*Allocation of limits:* Under the proposed framework, NMFS could allocate a Commission-mandated limit among different fisheries sectors, such as among groups of fishing vessels that use different types of fishing gear. For example, given a Commission decision to limit catches of a particular species irrespective of the type of fishing gear used to catch it, NMFS could decide to allocate the limit between the longline and the purse seine fisheries, using the proposed framework to establish specific limits for each of the two fisheries. NMFS could also use the framework to specify limits for particular fisheries even when the Commission-mandated limit is not specific to particular fisheries.

The proposed framework would not be used to allocate Commission-mandated limits among individual fishing vessels (except in the case where a single fishing vessel comprises an entire sector or fishery). This would not preclude NMFS from allocating Commission-mandated limits among individual fishing vessels through separate regulations.

*Framework procedures:* The framework's procedures for specifying limits would be as follows: NMFS would publish in the **Federal Register** a notice of the proposed specification and a request for public comment on the proposed specification. The proposed specification would include all the relevant characteristics of the limit. After consideration of public comment received on the proposed specification, NMFS would publish in the **Federal Register** a notice of the final specification.

*Consequences of limits being reached:* For quantitative limits, NMFS would

monitor catch or fishing effort with respect to the specified limit using data submitted in vessel logbooks and other available information. When NMFS estimates or projects that the specified limit has been or will be reached, NMFS would publish a notification to that effect in the **Federal Register**. For quantitative limits, this notification would include an advisement that specific activities will be restricted, and/or that certain requirements will be in place, during a specific period. The notification would specify the restrictions and requirements and the specific activities to which they apply and the start and end dates and times of those restrictions. The start date of the restrictions and requirements would not be earlier than 7 days after the date of filing the closure notice for public inspection at the Office of the Federal Register.

## 2. Requirement To Obtain IMO Number

This element of the proposed rule would apply to all U.S. fishing vessels (including those participating in the fisheries of the U.S. Participating Territories) that are used for commercial fishing for highly migratory fish stocks in the Convention Area either on the high seas or in waters under the jurisdiction of a foreign nation, and the gross tonnage of which is at least 100 GRT (gross register tons) or 100 GT (gross tons) ITC. This requirement would implement a decision of the Commission made in 2013 as part of CMM 2013–10, "WCPFC Record of Fishing Vessels and Authorization to Fish." CMM 2013–10 requires each member of the Commission, including the United States, to maintain a record of its fishing vessels that are authorized to fish in the Convention Area beyond its area of national jurisdiction, and to periodically share the information in its record with the Commission. As reflected in CMM 2013–10, in 2013 the Commission decided to require that an additional piece of information be included in members' records for fishing vessels whose gross tonnage is at least 100 GRT or 100 GT: The International Maritime Organization (IMO) number or Lloyd's Register number. An IMO number, also known as an IMO ship identification number, is the number issued for a ship or vessel under the ship identification number scheme established by the International Maritime Organization. An IMO number is unique and stays with the vessel for its life, regardless of changes in the vessel's flag, name, ownership, or other attributes. As used in CMM 2013–10, "Lloyd's Register number," or "LR number," has the same meaning as IMO

number except that the former refers to the number issued for a vessel that is not required—under IMO agreements—to be issued an IMO number. The administrator of the IMO ship identification number scheme issues both types of numbers using the same numbering scheme. Hereafter in this proposed rule, “IMO number” is used to refer to both IMO numbers and Lloyd’s Register numbers. Currently, IMO numbers are issued on behalf of the IMO by IHS Maritime, the current administrator of the IMO ship identification number scheme.

For each of the subject fishing vessels described above, this proposed rule would require that the owner of the fishing vessel ensure that an IMO number has been issued for the vessel. Furthermore, satisfying this requirement, if applicable, would be made a prerequisite for eligibility to receive a WCPFC Area Endorsement. The WCPFC Area Endorsement is the endorsement required—along with a high seas fishing permit—for a U.S. fishing vessel to be used for commercial fishing for HMS on the high seas in the Convention Area (see 50 CFR 300.212).

If not already issued, the vessel owner may request that an IMO number be issued by following the instructions given by IHS Maritime, available at: [www.imonumbers.lrfairplay.com/default.aspx](http://www.imonumbers.lrfairplay.com/default.aspx). There is no fee for making such a request or having an IMO number issued, but specific information about the fishing vessel and its ownership and management must be provided to the administrator of the scheme.

Because IHS Maritime is not affiliated with the U.S. government and its actions are outside the control of NMFS and the U.S. government, the proposed rule includes a process for fishing vessel owners to claim to NMFS that they are unable—through no fault of their own—to obtain IMO numbers. NMFS would review the claim, assist the fishing vessel owner as appropriate, and if it determines that it is infeasible or impractical for the fishing vessel owner to comply with the requirement, NMFS would issue an exemption from the requirement for a specific or indefinite amount of time. The exemption would become void if ownership of the fishing vessel changes.

### 3. Other Regulatory Changes

The proposed rule includes several other changes to the existing regulations to enhance clarity and promote efficiency, some of which are administrative in nature.

First, this rule proposes to remove the regulations requiring that U.S. purse

seine vessels carry WCPFC observers on fishing trips in the Convention Area (50 CFR 300.223(e)) because the applicable dates of the requirements, which extended through December 31, 2014, have passed. NMFS emphasizes that U.S. purse seine vessels operating in the Convention Area are, and will likely continue to be, subject to requirements to carry WCPFC observers under the current regulations at 50 CFR 300.215. Under this section, U.S. fishing vessels operating in the Convention Area must carry a WCPFC observer when directed to do so by NMFS. NMFS has issued such directions to purse seine vessel owners for 2015, and anticipates doing so in subsequent years.

Second, this rule proposes to revise the definition of “fishing day” to remove the reference to 50 CFR 300.223. As currently defined at 50 CFR 300.211, the term applies only to the regulations at 50 CFR 300.223, “Purse seine fishing restrictions,” which establish limits on purse seine fishing effort, restrictions on the use of FADs, and other restrictions that apply to purse seine fishing. Because under this proposed rule some restrictions of those types would be established under a new regulatory section devoted to the framework, NMFS proposes to revise the term “fishing day” to apply more broadly to all the regulations in 50 CFR part 300 subpart O, but it would continue to be limited to the activities of purse seine fishing vessels. Under this proposed rule, “fishing day” would mean, for fishing vessels equipped with purse seine gear, any day in which a fishing vessel searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

Third, this rule proposes to remove certain elements of the existing regulations that require purse seine vessels in the Convention Area to retain on board all the catch of three species of tuna (bigeye tuna, yellowfin tuna, and skipjack tuna), with certain exceptions (50 CFR 300.223(d)), because they are obsolete. When the first version of these regulations was established in 2009 (final rule published August 4, 2009; 74 FR 38544), the catch retention requirements were made contingent on a continuing determination by NMFS that there are an adequate number of WCPFC observers available for the purse seine vessels of all members of the Commission as necessary to ensure compliance by such vessels with the catch retention requirements. This contingency was based on the provisions of the Commission decision

being implemented at the time, CMM 2008–01, which included a qualifier that the catch retention requirements were subject to implementation by Commission members of 100 percent observer coverage for purse seine vessels. However, CMM 2014–01, a successor to CMM 2008–01, which is currently in effect, does not include any such qualifier for the catch retention requirements. Thus, this proposed rule would remove paragraphs (1) and (2) of 50 CFR 300.223(d), which contain the contingencies.

Fourth, this rule proposes to make changes to the requirements related to the installation and operation of vessel monitoring system (VMS) units on fishing vessels that are used to fish commercially for HMS on the high seas in the Convention Area. The current regulations at 50 CFR 300.219 require the owner and the operator (*i.e.*, the master or other individual aboard and in charge of the vessel) of any such vessel to expressly authorize NMFS and the Commission to receive and relay transmissions from the VMS unit. NMFS proposes to revise those regulations to provide NMFS and the Commission with an implicit authorization to receive and relay transmissions from the unit. In other words, under the proposed change, an explicit written authorization from the vessel owner and operator would not be needed for NMFS and the Commission to receive and relay transmissions from the VMS unit. NMFS recognizes this requirement is an unnecessary step and therefore is proposing to remove this requirement.

Finally, this rule proposes changes to the requirement for the owners or operators of U.S. purse seine vessels to submit to NMFS daily reports on how many sets were made on FADs. These reports enable NMFS to monitor the number of purse seine sets on FADs (“FAD sets”) to determine if they are within the established limits. The existing requirement, at 50 CFR 300.218(g), only goes into effect when NMFS publishes a notice in the **Federal Register** announcing that it is in effect. NMFS has never issued such a notice because there is currently no limit on the number of FAD sets. NMFS expects that the proposed framework to implement Commission decisions, as described earlier in the preamble, could be used to establish limits on FAD sets in the future. NMFS proposes to revise the daily FAD reporting requirement to make the daily report process more efficient, if FAD limits are put in place. Under the proposed revisions, NMFS would remove the requirement for the publication of a **Federal Register** notice,

and instead allow NMFS to contact vessel owners or operators directly with instructions on the timing and submission of the reports. This would give NMFS more flexibility in specifying when the reports are required. NMFS anticipates directing vessel owners or operators to submit the reports only in periods during which limits on FAD sets are in place. Under the proposed revised reporting requirement, if directed by NMFS, the owner or operator of any fishing vessel of the United States equipped with purse seine gear must report to NMFS, within 24 hours of the end of each day that the vessel is at sea in the Convention Area the number of purse seine sets that were made on FADs during the period and in the format and manner directed by the NMFS Pacific Islands Regional Administrator.

### Proposed Specifications

Using the framework proposed to be established at 50 CFR 300.227, as described above, NMFS proposes specifications to implement particular provisions of CMM 2014–01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean,” adopted at the Commission’s Eleventh Regular Session, in December 2014. CMM 2014–01 is a successor to, and is only slightly modified from, CMM 2013–01. These and other WCPFC conservation and management measures are available at: [www.wcpfc.int/conservation-and-management-measures](http://www.wcpfc.int/conservation-and-management-measures).

The stated general objective of CMM 2014–01, and several of its predecessor CMMs, is to ensure that the stocks of bigeye tuna, yellowfin tuna, and skipjack tuna in the WCPO are, at a minimum, maintained at levels capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors. CMM 2014–01 includes specific objectives for each of the three stocks; the common objective is that the fishing mortality rate is to be reduced to or maintained at levels no greater than the fishing mortality rate associated with maximum sustainable yield.

The provisions of CMM 2014–01 apply on the high seas and in EEZs in the Convention Area; that is, they do not apply in territorial seas or archipelagic waters.

CMM 2014–01 went into effect February 3, 2015, and is generally applicable for the 2015–2017 period. The CMM includes provisions for purse seine vessels, longline vessels, and other types of vessels that fish for HMS.

The specifications proposed here are for 2015 only. NMFS anticipates proposing specifications for subsequent years separately, and generally on a year-by-year basis.

The only provisions of the CMM that would be implemented in the specifications proposed here are those related to restrictions on the use of FADs in purse seine fisheries. For reasons of timing, NMFS intends to implement the CMM’s provisions for longline fisheries, specifically, the provisions requiring that longline catches of bigeye tuna in the Convention Area in 2015 be limited to specified levels, through a separate rulemaking that would not make use of the framework proposed in this document (the catch limit for 2015 would be established in regulations at 50 CFR 300.224, as done in previous years). However, for years subsequent to 2015, NMFS anticipates using the proposed framework to establish longline bigeye tuna catch limits, as well as to implement other Commission decisions.

Below, the proposed specification related to purse seine FAD restrictions is introduced by describing the relevant provisions of CMM 2014–01, or the “Commission decision.” That description is followed by a description of the basis for NMFS’ proposed specification, and the proposed specification itself.

#### 4. Purse Seine FAD Restrictions

*Commission decision:* Paragraphs 14–19 of CMM 2014–01 require WCPFC members to implement certain restrictions on the use of FADs by purse seine fishing vessels. All the restrictions are to be applied in the Convention Area between the latitudes of 20° N. and 20° S.

Paragraph 14 requires that WCPFC members prohibit specific activities related to FADs by their purse seine vessels during July through September (called a “FAD prohibition period” here) in each of 2015, 2016, and 2017. Paragraphs 15–18 require that WCPFC members impose additional restrictions on the use of FADs in 2015, 2016, and 2017, some of which are contingent on further Commission decision-making. Until those decisions are taken, paragraphs 15–18, read in combination, mean that the United States must either add a fourth month, October, to the July–September FAD prohibition period in each of 2015, 2016, 2017, or limit the number of FAD sets in each of those three years to 2,522. Finally, paragraph 18 also requires WCPFC members to prohibit setting on FADs on the high seas in the Convention Area in 2017.

*Basis for proposed specification:* To implement paragraphs 14–19 of CMM 2014–01 for 2015, NMFS proposes restrictions on the use of FADs by U.S. purse seine vessels as follows.

In accordance with paragraph 14 of the CMM, in 2015 there would be a FAD prohibition period from July through September. NMFS has already established this three-month FAD prohibition period in regulations at 50 CFR 300.223(b) (see final rule published December 2, 2014; 79 FR 71327). It would be reiterated in the specification proposed here. In addition, NMFS proposes to implement the first of the two FAD-related options in paragraphs 15–18; that is, adding October to the FAD prohibition period, because NMFS believes it is the more cost-effective of the two options, taking into account the objectives of the CMM, the expected economic impacts on U.S. fishing operations and the nation as a whole, and expected environmental and other effects. The expected environmental and economic effects of both options are described in the PEA, RIR, and IRFA prepared for this proposed specification.

The specific activities that would be prohibited during the FAD prohibition period in 2015 are the same as those during FAD prohibition periods established by NMFS since 2009 (see proposed specifications below).

NMFS does not propose changes to the definition of a FAD, and it would remain as currently defined at 50 CFR 300.211. Although the definition of a FAD does not include a vessel, the restrictions during the FAD prohibition periods would include certain activities related to fish that have aggregated in association with a vessel, or drawn by a vessel, as described below.

*Proposed specification for 2015:* From July 1 through October 31, 2015, owners, operators, and crew of fishing vessels of the United States shall not do any of the following activities in the Convention Area in the area between 20° N. latitude and 20° S. latitude:

(1) Set a purse seine around a FAD or within one nautical mile of a FAD.

(2) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours, or setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel.

(3) Deploy a FAD into the water.

(4) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that: (a) A FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and (b) A FAD may be removed from the water and if removed may be cleaned, provided that it is not returned to the water.

(5) From a purse seine vessel or any associated skiffs, other watercraft or equipment, do any of the following, except in emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage: (a) Submerge lights under water; (b) suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment, or; (c) direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew.

#### Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this proposed rule and these proposed specifications are consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

#### Executive Order 12866

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

#### Regulatory Flexibility Act (RFA)

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule and specifications, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. The analysis follows:

#### Estimated Number of Small Entities Affected

Small entities include “small businesses,” “small organizations,” and “small governmental jurisdictions.” The Small Business Administration (SBA) has established size standards for all

major industry sectors in the United States, including commercial finfish harvesters (NAICS code 114111). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million for all its affiliated operations worldwide.

The proposed rule and specifications would apply to owners and operators of U.S. fishing vessels used for commercial fishing for HMS in the Convention Area. With the exception of the requirement to obtain an IMO number, the substantive elements of the rule and specifications (*i.e.*, those elements that could bring economic impacts to affected entities) would apply only to purse seine vessels. NMFS estimates that of all the U.S. fishing vessels to which the IMO number requirement would apply, only 7 do not already have an IMO number. Of the 7, 1 is a purse seine vessel, 4 are longline vessels, and 2 are troll vessels.

The number of purse seine vessels that would be affected by the purse seine specifications is the number of vessels licensed under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (South Pacific Tuna Treaty, or SPTT). The current number of licensed vessels is 37. The maximum number allowed under the SPTT, apart from joint venture licenses, none of which have ever been issued, is 40.

Thus, the fish harvesting entities that would be affected by the proposed rule and specifications include about 37 purse seine vessels, 4 longline vessels, and 2 troll vessels.

Based on (limited) available financial information about the affected fishing vessels and the SBA’s small entity size standards for commercial finfish harvesters, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses are small entities. NMFS used average per-vessel returns over recent years to estimate annual revenue because gross receipts and ex-vessel price information specific to the affected vessels are not available to NMFS. For the purse seine fishery, NMFS estimates that the average annual receipts over 2010–2012 for each purse seine vessel were less than the \$20.5 million threshold for finfish harvesting businesses (the greatest was about \$19 million) based on the catches of each vessel in the purse seine fleet during that period, and indicative regional

cannery prices developed by the Pacific Islands Forum Fisheries Agency (available at <https://www.ffa.int/node/425#attachments>). Since 2012, cannery prices have declined dramatically, so the vessels’ revenues in 2013 and 2014 have very likely declined as well. For the longline fishery, the ex-vessel value of catches by the Hawaii longline fleet in 2012 was about \$87 million. With 129 active vessels in that year, per-vessel average revenues were about \$0.7 million, well below the \$20.5 million threshold for finfish harvesting businesses.

#### Recordkeeping, Reporting, and Other Compliance Requirements

The recordkeeping, reporting, and other compliance requirements are discussed below for each of the main elements of the proposed rule and proposed specifications, as described earlier in the **SUPPLEMENTARY INFORMATION** section of the preamble. Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess. The costs of complying with the proposed requirements are described below to the extent possible:

##### 1. Framework To Implement Commission Decisions

The proposed framework would establish administrative procedures for implementing Commission decisions. It would not in itself establish any requirements for owners or operators of fishing vessels or other entities, so it is not discussed further in this IRFA.

##### 2. Requirement To Obtain IMO Number

The requirement to obtain an IMO number would be a one-time requirement; once a number has been issued for a vessel, the vessel would be in compliance for the remainder of its life, regardless of changes in ownership. Most entities that would be required to obtain an IMO number already have them. NMFS estimates that 7 fishing vessels (that are currently in the fishery) would initially be subject to the requirement, and projects that as fishing vessels enter the fishery in the future, roughly two per year would be required to obtain IMO numbers. Completing and submitting the application form (which can be done online and requires no fees) would take about 30 minutes per applicant, on average. Assuming a value of labor of approximately \$26 per hour and communication costs of about \$1 per application, the (one-time) cost to each entity would be about \$14.

### 3. Other Regulatory Changes

Among the proposed rule's other regulatory changes, only the change to the daily FAD reporting requirements has the potential to bring economic impacts to affected entities. Under the existing regulations, when NMFS triggers the daily FAD reporting requirement through an announcement in the **Federal Register**, the vessel owner or operator has to complete and submit the reports each day while the fishing vessel is at sea in the Convention Area. NMFS currently estimates this cost to be about \$1,360 per vessel per year. Under the proposed change, the vessel owner or operator would have to complete and submit the reports only if and when directed by NMFS. Because the proposed purse seine FAD restrictions for 2015 do not include any FAD set limits, it is unlikely that NMFS would direct vessel operators to submit reports for 2015. Thus, the change would potentially reduce the reporting costs to affected purse seine entities during this period.

### 4. Purse Seine FAD Restrictions

The proposed FAD prohibition period in July–October in 2015 would substantially constrain the manner in which purse seine fishing could be conducted in that period in the Convention Area; vessels would be able to set only on free, or “unassociated,” schools.

The costs associated with the FAD restrictions cannot be quantitatively estimated, but the fleet's historical use of FADs can give a qualitative estimate of the costs. In the years 1997–2013, the proportion of sets made on FADs in the U.S. purse seine fishery ranged from less than 30 percent in some years to more than 90 percent in others. Thus, the importance of FAD sets in terms of profits appears to be quite variable over time, and is probably a function of many factors, including fuel prices (unassociated sets involve more searching time and thus tend to bring higher fuel costs than FAD sets) and market conditions (*e.g.*, FAD fishing, which tends to result in greater catches of lower-value skipjack tuna and smaller yellowfin tuna and bigeye tuna than unassociated sets, might be more attractive and profitable when canneries are not rejecting small fish). Thus, the costs of complying with the FAD restrictions would depend on a variety of factors.

In 2010–2013, the last 4 years for which complete data are available and for which there was 100 percent observer coverage, the U.S. WCPO purse seine fleet made about 39 percent of its

sets on FADs. During the months when setting on FADs was allowed, the percentage was about 58 percent. The fact that the fleet has made such a substantial portion of its sets on FADs indicates that prohibiting the use of FADs for four months each year could bring substantial costs and/or revenue losses.

To mitigate these impacts, vessel operators might choose to schedule their routine vessel and equipment maintenance during the FAD prohibition periods. However, the limited number of vessel maintenance facilities in the region might constrain vessel operators' ability to do this. It also is conceivable that some vessels might choose not to fish at all during the FAD prohibition periods rather than fish without the use of FADs. Observations of the fleet's behavior in 2009–2013, when FAD prohibition periods were in effect, do not suggest that either of these responses occurred to an appreciable degree. The proportion of the fleet that fished during the two- and three-month FAD prohibition periods of 2009–2013 did not appreciably differ from the proportion that fished during the same months in the years 1997–2008, when no FAD prohibition periods were in place.

In summary, the economic impacts of the FAD prohibition period in 2015 cannot be quantified, but they could be substantial. Their magnitude would depend in part on market conditions, ocean conditions and the magnitude of any limits on allowable levels of fishing effort in foreign EEZs and on the high seas in the Convention Area.

#### Disproportionate Impacts

As indicated above, all affected entities are believed to be small entities, thus small entities would not be disproportionately affected relative to large entities. Nor would there be disproportionate economic impacts based on home port.

As indicated above, there could be disproportionate impacts according to vessel type and size and the types of fishing permits held.

#### Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that duplicate, overlap with, or conflict with the proposed regulations, with the exception of a Federal regulation that duplicates to some extent the daily FAD reporting requirement that would be revised under the proposed rule. Existing regulations at 50 CFR 300.34 require that a record of catch, effort and other information must be maintained on

board vessels licensed under the South Pacific Tuna Act, on catch report forms known as Regional Purse Seine Logsheets, or RPLs. The RPLs must be submitted to NMFS within two days of a vessel reaching port. The RPLs include the information that would be required to be reported under this proposed rule, such as, how many FAD sets were made on a given day. However, the timing of the RPL requirement is such that it would not provide NMFS with the information it needs to estimate and project FAD sets with respect to the proposed limit in a timely and reliable manner. For that reason, NMFS established the daily FAD reporting requirement that is duplicative in terms of the substance—but not the timing—of one element of the existing RPL reporting requirement. Under the revision proposed in this rule, that duplication would remain.

#### Alternatives to the Proposed Provisions

NMFS has sought to identify alternatives that would minimize the proposed provisions' economic impact on small entities (“significant alternatives”). Taking no action could result in lesser adverse economic impacts than the proposed action for many affected entities (but as described above, for some affected entities, the proposed provisions could be more economically beneficial than no-action), but NMFS has determined that the no-action alternative would fail to accomplish the objectives of the WCPFC Implementation Act, including satisfying the international obligations of the United States as a Contracting Party to the Convention, and NMFS does not prefer it for that reason. Alternatives identified for each of the main elements of the proposed rule and proposed specifications are discussed below:

##### 1. Framework To Implement Commission Decisions

The proposed framework would not in itself establish any requirements for owners or operators of fishing vessels or other entities, so would not bring economic impacts. Thus, NMFS has not identified any significant alternatives.

##### 2. Requirement To Obtain IMO Number

NMFS has not identified any significant alternatives to the IMO number requirement that would comport with U.S. obligations to implement the Commission decision regarding IMO numbers.

##### 3. Other Regulatory Changes

None of the other proposed regulatory changes are expected to bring adverse

economic impacts to affected entities, so NMFS has not identified any significant alternatives.

#### 4. Purse Seine FAD Restrictions

NMFS considered in detail one alternative to the proposed restrictions on the use of FADs. Under the alternative, purse seine vessels would be subject to a three-month (July–September) FAD prohibition period in 2015, and a limit of 2,522 FAD sets for the year. This alternative would be consistent with the options available to the United States under CMM 2014–01. The impacts of this alternative relative to those of the proposed action would depend on the total amount of fishing effort available to the U.S. purse seine fleet in the Convention Area in 2015. If total available fishing effort is relatively high, the proposed action would likely allow for more FAD sets than would this alternative, and thus likely cause lesser adverse impacts. The reverse would be the case for relatively low levels of total available fishing effort. For example, given the fleet’s historical average FAD set ratio of 58 percent, and assuming an even distribution of sets throughout the year, the estimated “breakeven” point between the two alternatives would be 6,502 total available sets for the year. Although the amount of fishing effort that will be available to the fleet in the future, particularly under the SPTT, cannot be predicted with any certainty, 6,502 sets is substantially less than the amounts of fishing effort that have been available to the fleet since it has been operating under the SPTT. For that reason, NMFS expects that the proposed action likely would cause less severe economic impacts on the purse seine fleet and its participants than would this alternative, and NMFS prefers the proposed action for that reason.

#### Paperwork Reduction Act

This proposed rule contains three collection-of-information requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

The first collection has been submitted to OMB for review and approval under control number 0648–0595, “Western and Central Pacific Fisheries Convention Vessel Information Family of Forms.” This collection-of-information would be revised to include the requirement for the owners of certain fishing vessels to ensure that IMO numbers are issued for the vessels. This would be a one-time requirement; no renewals or updates would be required during the life of a vessel. A fishing vessel owner would

request the issuance of an IMO number by submitting specific information about the vessel and its ownership and management to IHS Maritime, which issues IMO numbers on behalf of the International Maritime Organization. If a fishing vessel requires an exemption, the owner must provide the required information to NMFS. Providing the required information would bring a reporting burden of approximately 30 minutes per response.

The second collection, requirements related to installing and operating vessel monitoring system units, has been approved by OMB under control number 0648–0596, “Vessel Monitoring System Requirements under the Western and Central Pacific Fisheries Convention.” Public reporting burden for the VMS requirements is estimated to average 5 minutes per response for the activation reports and on/off reports, 4 hours per response for VMS unit purchase and installation, and 1 hour per response for VMS unit maintenance.

The third collection, the daily FAD reporting requirement, has been approved by OMB under control number 0648–0649, “Transshipment Requirements under the WCPFC.” Public reporting burden for the daily FAD report is estimated to average 10 minutes per response.

These estimated response times include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates, or any other aspect of the data collections, including whether the current and/or proposed collections are necessary for the performance of the functions of the agency, the accuracy of the agency’s estimates of burden, ways to enhance the utility and clarity of information, and suggestions for reducing the burden, to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES**) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### List of Subjects in 50 CFR Part 300

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

Dated: July 17, 2015.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

### PART 300—INTERNATIONAL FISHERIES REGULATIONS

#### Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

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

**Authority:** 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.211, revise the definition of “Fishing day” to read as follows:

#### § 300.211 Definitions.

\* \* \* \* \*

*Fishing day* means, for fishing vessels equipped with purse seine gear, any day in which a fishing vessel searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

\* \* \* \* \*

■ 3. In § 300.217, add paragraph (c) to read as follows:

#### § 300.217 Vessel identification.

\* \* \* \* \*

(c) *IMO numbers.* (1) For the purpose of this section, an IMO number is the unique number issued for a vessel under the ship identification number scheme established by the International Maritime Organization or, for vessels that are not strictly subject to that scheme, the unique number issued by the administrator of that scheme using the scheme’s numbering format, sometimes known as a Lloyd’s Register number or LR number.

(2) The owner of a fishing vessel of the United States used for commercial fishing for HMS in the Convention Area, either on the high seas or in waters under the jurisdiction of any nation other than the United States, shall request and obtain an IMO number for the vessel if the gross tonnage of the vessel, as indicated on the vessel’s current Certificate of Documentation issued under 46 CFR part 67, is at least 100 GRT or 100 GT ITC. An IMO number may be requested for a vessel by following the instructions given by the administrator of the IMO ship identification number scheme; those instructions are currently available on



the Web site of IHS Maritime, at: [www.imonumbers.lrfairplay.com/default.aspx](http://www.imonumbers.lrfairplay.com/default.aspx).

(3) In the event that the owner of a fishing vessel subject to the requirement of paragraph (c)(2) of this section, after following the instructions given by the administrator of the IMO ship identification number scheme, is unable to obtain an IMO number for the fishing vessel, the fishing vessel owner may request an exemption from the requirement from the Pacific Islands Regional Administrator. The request must be sent by mail to the Pacific Islands Regional Administrator or by email to [pir.wcpfc@noaa.gov](mailto:pir.wcpfc@noaa.gov) and must include the vessel's name, the vessel's official number, a description of the steps taken to request an IMO number, and a description of any responses from the administrator of the IMO ship identification number scheme.

(4) Upon receipt of a request for an exemption under paragraph (c)(3) of this section, the Pacific Islands Regional Administrator will, to the extent he or she determines appropriate, assist the fishing vessel owner in requesting an IMO number. If the Pacific Islands Regional Administrator determines that it is infeasible or impractical for the fishing vessel owner to obtain an IMO number for the fishing vessel, he or she will issue an exemption from the requirements of paragraph (c)(2) of this section for the subject fishing vessel and its owner and notify the fishing vessel owner of the exemption. The Pacific Islands Regional Administrator may limit the duration of the exemption. The Pacific Islands Regional Administrator may rescind an exemption at any time. If an exemption is rescinded, the fishing vessel owner must comply with the requirements of paragraph (c)(2) of this section within 30 days of being notified of the rescission. If the ownership of a fishing vessel changes, an exemption issued to the former fishing vessel owner becomes void.

■ 4. In § 300.218, revise paragraph (g) to read as follows:

**§ 300.218 Reporting and recordkeeping requirements.**

\* \* \* \* \*

(g) *Daily FAD reports.* If directed by NMFS, the owner or operator of any fishing vessel of the United States equipped with purse seine gear must report to NMFS, for the period and in the format and manner directed by the Pacific Islands Regional Administrator, within 24 hours of the end of each day that the vessel is at sea in the Convention Area, the number of purse

seine sets were made on FADs during that day.

\* \* \* \* \*

■ 5. In § 300.219, revise paragraphs (c)(1) and (5) to read as follows:

**§ 300.219 Vessel monitoring system.**

\* \* \* \* \*

(c) \* \* \*

(1) *VMS unit.* The vessel owner and operator shall install and maintain on the fishing vessel, in accordance with instructions provided by the SAC and the VMS unit manufacturer, a VMS unit that is type-approved by NMFS for fisheries governed under the Act. The vessel owner and operator shall arrange for a NMFS-approved mobile communications service provider to receive and relay transmissions from the VMS unit to NMFS. NMFS makes available lists of type-approved VMS units and approved mobile communications service providers. NMFS and the Commission are authorized to receive and relay transmissions from the VMS unit.

\* \* \* \* \*

(5) *Related VMS requirements.* Installing, carrying and operating a VMS unit in compliance with the requirements in part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units shall be deemed to satisfy the requirements of paragraph (c) of this section, provided that the VMS unit is operated continuously and at all times while the vessel is at sea, the VMS unit is type-approved by NMFS for fisheries governed under the Act, and the specific requirements of paragraph (c)(4) of this section are complied with. If the VMS unit is owned by NMFS, the requirement under paragraph (c)(4) of this section to repair or replace the VMS unit will be the responsibility of NMFS, but the vessel owner and operator shall be responsible for ensuring that the VMS unit is operable before leaving port or starting the next trip.

\* \* \* \* \*

■ 6. In § 300.222:

- a. Remove paragraphs (x) and (z);
- b. Redesignate paragraphs (y) and (aa) as paragraphs (x) and (y), respectively;
- c. Redesignate paragraphs (bb) through (ww) as (z) through (uu), respectively; and
- d. Add paragraphs (vv) and (ww) to read as follows:

**§ 300.222 Prohibitions.**

\* \* \* \* \*

(vv) Fail to obtain an IMO number for a fishing vessel as required in § 300.217(c).

(ww) Fail to comply with any of the limits, restrictions, prohibitions, or requirements specified under § 300.227.

■ 7. In § 300.223, revise paragraph (d), and remove and reserve paragraph (e) to read as follows:

**§ 300.223 Purse seine fishing restrictions.**

\* \* \* \* \*

(d) *Catch retention.* An owner and operator of a fishing vessel of the United States equipped with purse seine gear must ensure the retention on board at all times while at sea within the Convention Area any bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*), except in the following circumstances and with the following conditions:

(1) Fish that are unfit for human consumption, including but not limited to fish that are spoiled, pulverized, severed, or partially consumed at the time they are brought on board, may be discarded.

(2) If at the end of a fishing trip there is insufficient well space to accommodate all the fish captured in a given purse seine set, fish captured in that set may be discarded, provided that no additional purse seine sets are made during the fishing trip.

(3) If a serious malfunction of equipment occurs that necessitates that fish be discarded.

(e) [Reserved]

\* \* \* \* \*

■ 8. Add § 300.227 to subpart O to read as follows:

**§ 300.227 Framework for catch and fishing effort limits.**

(a) *General.* To implement conservation and management measures adopted by the Commission, the Pacific Islands Regional Administrator may specify limits on catch or fishing effort by fishing vessels of the United States in the Convention Area, and other fishing-related restrictions and requirements (collectively called "limits"). The limits will be designed to satisfy the obligations of the United States with respect to particular provisions of Commission-adopted conservation and management measures. For each specified limit, the Pacific Islands Regional Administrator will specify the area and period in which it applies, and as appropriate, the vessel types, gear types, species, fish sizes, and any other relevant attributes to which it applies. In addition to quantitative limits on catches and fishing effort, the Pacific Islands Regional Administrator may specify areas or periods in which particular fishing activities are restricted or

prohibited, and other fishing-related requirements. For each specified quantitative limit, the Pacific Islands Regional Administrator will also specify the prohibitions and requirements that would go into effect after the limit is reached and the applicable dates of those prohibitions.

(b) *Application in territorial seas and archipelagic waters.* Unless stated otherwise in particular specifications, the limits specified under the framework shall not apply in the territorial seas or archipelagic waters of the United States or any other nation, as defined by the domestic laws and regulations of that nation and recognized by the United States.

(c) *Types of limits.* The types of limits that may be specified under this section include, but are not limited to:

(1) Limits on the weight or number of fish or other living marine resources of specific types and/or sizes that may be caught, retained, transshipped, landed, and/or sold;

(2) Limits on the amount of fishing effort that may be expended, such as the amount of time vessels spend at sea (e.g., days at sea) or engaged in fishing (e.g., fishing days), the amount of time vessels spend engaged in particular fishing activities (e.g., trolling hours), and the quantity of specific fishing activities (e.g., number of hooks set; number of longline sets or purse seine sets; number of purse seine sets made on FADs; number of FADs deployed); and

(3) Areas or periods in which particular activities are restricted or prohibited, such as periods during which it is prohibited to set purse seines on FADs or to use FADs in specific other ways.

(d) *U.S. and territorial fisheries.* For the purpose of distinguishing the fisheries of the United States and the fisheries of the United States territories from each other under limits specified under this section, as needed to implement Commission conservation and management measures, such as to determine the vessels to which a specified limit applies or to attribute catch or fishing effort against a specified limit, all fishing activity of a fishing vessel of the United States, including its catch and fishing effort, is, for the purpose of this section, considered part of a fishery of the United States except as follows:

(1) Except as provided in paragraphs (d)(2) and (d)(3) of this section, if catch is landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, the catch and associated fishing effort are considered

part of a fishery of the territory in which it is landed, provided that:

(i) It was not caught using purse seine gear;

(ii) It was not caught in any portion of the EEZ other than the portion of the EEZ surrounding the territory in which it was landed; and

(iii) It was landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(2) Except as provided in paragraph (d)(3) of this section, if catch is made by longline gear by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.801(c) of this title, the catch and associated fishing effort are considered part of a fishery of American Samoa, provided that:

(i) It was not caught in any portion of the EEZ other than the portion of the EEZ surrounding American Samoa; and

(ii) It was landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(3) If catch or fishing effort is made by a vessel that is included in a specified fishing agreement under § 665.819(c) of this title, the catch and associated fishing effort are considered part of a fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, according to the terms of the agreement to the extent the agreement is consistent with § 665.819(c) of this title and other applicable laws, provided that:

(i) The start date specified in § 665.819(c)(9)(i) of this title has occurred or passed; and

(ii) NMFS has not made a determination under § 665.819(c)(9)(iii) of this title that the catch or fishing effort exceeds any limit allocated to the territory that is a party to the agreement.

(e) *Allocation of limits among sectors or vessels.* (1) The Pacific Islands Regional Administrator may allocate a Commission-mandated limit among particular sectors or groups of fishing vessels of the United States, such as for vessels that use different types of fishing gear. In other words, the Pacific Islands Regional Administrator may specify separate limits for different sectors or groups of fishing vessels even when not required to do so under the Commission's conservation and management measures.

(2) The Pacific Islands Regional Administrator may not, under this framework, allocate a Commission-mandated limit among individual fishing vessels of the United States. In other words, the Pacific Islands Regional Administrator may not, under

this framework, specify limits for individual fishing vessels of the United States, except in the case where there is only one fishing vessel in a sector or group of fishing vessels that is subject to the limit. This does not preclude NMFS from allocating Commission-mandated limits among individual fishing vessels through other regulations.

(f) *Procedures for specifying limits.* (1) For each specified limit, the Pacific Islands Regional Administrator will publish in the **Federal Register** a notice of the proposed catch or fishing effort limit specification and a request for public comment on the proposed specification, unless exempted under the Administrative Procedure Act, 5 U.S.C. 553. The specification will include the characteristics of the limit and the restrictions that will go into effect if the limit is reached.

(2) For each specified limit that is subject to prior notice and public comment, the Pacific Islands Regional Administrator will consider any public comment received on the proposed specification, and publish in the **Federal Register** a notice of the final catch or fishing effort limit specification, if appropriate.

(g) *Notification of limits being reached.* For quantitative limits, NMFS will monitor catch or fishing effort with respect to the specified limit using data submitted in vessel logbooks and other available information. When NMFS estimates or projects that the specified limit has or will be reached, the Pacific Islands Regional Administrator will publish notification to that effect in the **Federal Register**.

(h) *Prohibitions after limit is reached.* For quantitative limits, the **Federal Register** notice published under paragraph (g) of this section will include an advisement that specific activities will be prohibited during a specific period. The notice will specify the prohibitions and their start and end dates. The start date of the prohibitions may not be earlier than 7 days after the date of filing for public inspection at the Office of the Federal Register the notice to be published under paragraph (g) of this section. The prohibited activities may include, but are not limited to, possessing, retaining on board, transshipping, landing, or selling specific types and/or sizes of fish or other living marine resources, and fishing with specified gear types or methods in specified areas. The Pacific Islands Regional Administrator may, based on revised estimates or projections of catch or fishing effort with respect to specified limits, rescind or modify the prohibitions specified

under this section. The Pacific Islands  
Regional Administrator will publish

notice of any such rescissions or  
modifications in the **Federal Register**.

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