

testing, and integration of automated technologies for surface modes (*i.e.*, highway and rail) on both the HMR and the general transport of hazardous materials.

Specifically, PHMSA asks:

1. What are the safety, regulatory, and policy implications of the design, testing, and integration of surface automated vehicles on the requirements in the HMR? Please include any potential solutions PHMSA should consider.

2. What are potential regulatory incompatibilities between the HMR and a future surface transportation system that incorporates automated vehicles? Specific HMR areas could include but are not limited to:

- (a) Emergency response information and hazard communication
- (b) Packaging and handling requirements, including pre-transportation functions
- (c) Incident response and reporting
- (d) Safety and security plans (*e.g.*, en route security)
- (e) Modal requirements (*e.g.*, highway and rail)

3. Are there specific HMR requirements that would need modifications to become performance-based standards that can accommodate an automated vehicle operating in a surface transportation system?

4. What automated surface transportation technologies are under development that are expected to be relevant to the safe transport of hazardous materials, and how might they be used in a surface transportation system?

5. Under what circumstances do freight operators envision the transportation of hazardous materials in commerce using surface automated vehicles within the next 10 years?

(a) To what extent do the HMR restrict the use of surface automated vehicles in the transportation of hazardous materials in non-bulk packaging in parcel delivery and less-than-truckload freight shipments by commercial motor vehicles?

(b) To what extent do the HMR restrict the use of surface automated vehicles in the transportation of hazardous materials in bulk packaging by rail and commercial motor vehicles?

6. What issues do automated technologies raise in hazardous materials surface transportation that are not present for human drivers or operators that PHMSA should address?

7. How might potential changes to the HMR for integration of surface automated vehicle technologies impact current requirements for human drivers or operators (*i.e.*, training)?

8. Do HMR requirements that relate to the operation of surface automated vehicles carrying hazardous materials present different challenges than those that relate to ancillary tasks, such as inspections and packaging requirements?

9. How will the behavioral responses of road and railway users change with the integration of surface automated vehicle technologies? What will the reaction be to automated vehicles or rail cars with markings denoting the presence of hazardous materials?

10. What solutions could PHMSA consider to address potential future regulatory incompatibilities between the HMR and surface automated vehicle technologies?

11. What should PHMSA consider when reviewing applications for special permits seeking regulatory flexibility to allow for the transport of hazardous materials using automated technologies for surface modes?

12. When considering long-term solutions to challenges the HMR may present to the development, testing, and integration of surface automated vehicles, what information and other factors should PHMSA consider?

13. What should PHMSA consider when developing future policy, guidance, and regulations for the safe transportation of hazardous materials in surface transportation systems?

Signed in Washington, DC, on March 23, 2018.

**Drue Pearce,**

*Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 171227999-8273-01]

RIN 0648-BH48

#### Tuna Conventions Act; Advance Notice of Rulemaking; Regulatory Amendments to Procedures for the Active and Inactive Vessel Register

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

**ACTION:** Advance notice of proposed rulemaking; request for comment.

**SUMMARY:** The National Marine Fisheries Service (NMFS) is considering

amending regulations governing the utilization of purse seine vessel capacity limits associated with the Regional Vessel Register of the Inter-American Tropical Tuna Commission. This advance notice of proposed rulemaking (ANPR) is intended to provide notice to the public of our planning efforts and request comment that will assist in identifying revised administrative processes to improve the efficient utilization and management of capacity limits. This information will help inform our evaluation of what, if any, regulatory amendments are necessary and advisable.

**DATES:** Comments must be submitted in writing by April 30, 2018.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2018-0030, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0030](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0030), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Attn: Heidi Taylor, Highly Migratory Species Branch Chief, NMFS West Coast Region, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802.

Include the identifier "NOAA-NMFS-2018-0030" in the comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may 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, address, etc.), 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).

**FOR FURTHER INFORMATION CONTACT:**

Daniel Studt, NMFS West Coast Region, 562-980-4073.

**SUPPLEMENTARY INFORMATION:**

**Background on the IATTC**

The United States is a member of the Inter-American Tropical Tuna Commission (IATTC), which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. In 2003, the IATTC adopted the Convention for the Strengthening of the IATTC Established by the 1949

Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The Antigua Convention entered into force in 2010. The United States acceded to the Antigua Convention on February 24, 2016. The full text of the Antigua Convention is available at: [https://www.iattc.org/PDFFiles2/Antigua\\_Convention\\_Jun\\_2003.pdf](https://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf).

The IATTC consists of 21 Members and five Cooperating Non-Members and facilitates the conservation and management of highly migratory species of fish in the IATTC Convention Area (Convention Area), as well as conducting scientific research on these species. The Convention Area is defined as the waters of the eastern Pacific Ocean (EPO) within the area bounded by the west coast of the Americas, the 50° N latitude, the 150° W longitude, and the 50° S latitude.

#### Obligations of the United States Under the IATTC Convention

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement certain decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951 *et seq.*), as amended on November 5, 2015, by Title II of Public Law 114–81, directs that the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department of Homeland Security, may promulgate such regulations as may be necessary to carry out the United States' international obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The Secretary of Commerce's authority to promulgate such regulations has been delegated to NMFS.

In June 2000, the IATTC adopted Resolution C–00–06: Resolution on a Regional Vessel Register. This Resolution has been amended, including most recently through adoption of Resolution C–14–01, which requires that Members submit a list of all vessels authorized to fish in the EPO to be listed on a Regional Vessel Register (Register). Purse seine vessels are further categorized on the Register as either “active” or “inactive and sunk” (inactive). Recognizing concerns of excess fishing capacity, the IATTC in 2002 adopted Resolution C–02–03: Resolution on the Capacity of the Tuna Fleet Operating in the Eastern Pacific Ocean (Revised). The Resolution established a vessel capacity limit of 158,000 cubic meters for all purse seine vessels authorized by the IATTC to fish for tuna species in the EPO. The

Resolution further specified that each Member and Cooperating Non-Member was allocated a purse seine vessel capacity limit by the IATTC based on historical fishing levels in the EPO, the level of tuna stocks, and other relevant factors. Pursuant to C–02–03, the United States was allocated a purse seine capacity limit of 31,866 cubic meters (m<sup>3</sup>). Each U.S. purse seine vessel listed on the Register, either as active or inactive, counts towards this U.S. capacity limit, except those utilizing a single-trip option exemption as described at 50 CFR 300.22(b)(1).

#### Background on the Pacific Purse Seine Fleet

Since 1971, the number of large (greater than 400 short tons (st) or 362.8 metric tons (mt) carrying capacity) U.S. purse seine vessels fishing for tuna in the EPO has decreased from over 155 to an average of 10 active and inactive large U.S. purse seine vessels over the past five years, utilizing an average of roughly 18,209 m<sup>3</sup> of capacity. Most of the U.S. vessels that historically fished in the EPO have either re-flagged or are now active in the Western and Central Pacific Ocean (WCPO), fishing under the Western and Central Pacific Fisheries Commission and a treaty between the United States and certain Pacific Island States (the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, also known as the South Pacific Tuna Treaty (SPTT)). The number of vessels in the U.S. WCPO purse seine fishery has also gradually decreased; shrinking from the late 1990s until 2006, and it has fluctuated since. In recent years, the U.S. WCPO purse seine fleet has included an average of 37 vessels, with a maximum of 40 vessels allowed to fish under the SPTT. These 37 vessels amount to roughly 55,000 m<sup>3</sup> of carrying capacity for reference.

In the last few years, changing operating conditions in the WCPO and an increase in the costs assessed to U.S. purse seiners for fishing under the SPTT has led to an increased number of large purse seine vessels seeking to be added to the IATTC Register. In 2016, 17 of the 37 purse seiners authorized to fish in the WCPO also fished in the EPO, which means they either utilized capacity on the Active Register or fished under the single-trip option exemption. Additionally, since 2014, small (less than or equal to 400 st or 362.8 mt carrying capacity) coastal purse seiners have had increased opportunities for catching tuna locally, leading to a growing number of small purse seine vessels utilizing active capacity on the

Register. Over the last 5 years, an average of 17 small U.S. purse seine vessels have utilized 1,945 m<sup>3</sup> of capacity.

This combination of interest by large and small purse seine vessel has led to the U.S. capacity on the Register to become fully allocated in recent years, such that no additional vessels could be added to the Register. The total capacity of requested vessels have exceeded the available capacity and NMFS anticipates this trend may continue. Thus, NMFS seeks to re-examine the administrative processes associated with the Register to ensure that capacity is being utilized to the full extent possible in the most effective way for both large and small purse seine vessels.

#### U.S. Regulations on the Regional Vessel Register

NMFS has implemented regulations governing U.S. purse seine vessels on the Register at 50 CFR 300.22(b). These regulations include the process for how vessel owners or managing owners request a purse seine vessel be added to the Register, including when and how to submit such a request; when and how to obtain the appropriate vessel and operator permits; pay the vessel assessment fee; and how vessels permitted and authorized under an alternative international tuna purse seine fisheries management regime in the Pacific Ocean may utilize a one-trip option into the EPO while being exempted from the requirement to be included on the Register. The regulations also address processes for removing a vessel from the Register and for replacing those vessels, and establishes criteria to deem requests for active status as “frivolous” for vessels that occupy U.S. capacity on the Register but do not actually fish in a given year. Furthermore, the regulations lay out the prioritization of requests following a specified hierarchy.

Requests for active status are prioritized according to the hierarchy listed at 50 CFR 300.22(b)(4)(i)(C). In general, the requests are prioritized in the following order: Vessels that were listed as active on the Register in the previous year, vessels that were listed as inactive on the Register in the previous year, vessels not listed on the Register in the previous year prioritized on a first-come, first-serve basis, and vessels which were previously listed on the Register as active in a given year but have been determined to have made a frivolous request.

Requests for active status are considered “frivolous” if, for a vessel categorized as active in a given calendar year, less than 20 percent of the vessel's

total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area, or the vessel did not fish for tuna at all in the Convention Area in that same year. Some exceptions to this apply.

The frivolous request provisions apply only to large purse seine vessels. These provisions are intended to prevent large purse seine vessel owners who do not have intent to fish in the Convention Area from requesting listing on the Register and occupying assigned capacity that may otherwise be utilized by active fishing vessels. Small purse seine vessels are not subject to the frivolous request provisions because owners of small vessels tend to have difficulty anticipating whether unassociated schools of tuna will migrate within the range of the vessels off the U.S. West Coast during the summer months in the upcoming year. Frivolous requests criteria may need to be reexamined to ensure full utilization of the U.S. capacity limit.

Additionally, there is no time limit for how long a vessel may remain on the Register as inactive, provided the vessel owner or managing owner requests this status every year and pays the associated vessel assessment. Since 2015, a single large purse seine vessel has been on the Register as inactive, occupying 1,523 m<sup>3</sup> of capacity that would otherwise be available for actively fishing vessels. NMFS seeks

input on whether to restrict the current practice that allows vessels to be continually listed as inactive, to improve the utilization of the U.S. purse seine capacity limit by vessels that will actually fish.

Lastly, NMFS intends to issue a technical correction to existing U.S. regulations to correct the regulatory carrying capacity to match that on record with the IATTC. A vessel which historically fished in the EPO prior to 2002, and whose carrying capacity was used in the initial capacity calculations for allotment to the United States, had its blueprints re-examined by the IATTC and was found to have had an additional 91 m<sup>3</sup> of carrying capacity than what was used in the initial calculation. The IATTC recognized that this re-examination increased the United States' historical capacity, and revised their accounting of U.S. capacity to reflect this. NMFS would, therefore, correct the capacity of 31,775 m<sup>3</sup> cited in our domestic regulations to reflect the IATTC's updated accounting that the U.S. capacity allotment is 31,866 m<sup>3</sup>.

For additional information on current regulations pertaining to the Register and procedures for purse seine vessels to be authorized to fish for tuna and tuna-like species in the EPO, please see the compliance guide located at [http://www.westcoast.fisheries.noaa.gov/publications/fisheries/migratory\\_species/iattc-rvr-compliance-guide.pdf](http://www.westcoast.fisheries.noaa.gov/publications/fisheries/migratory_species/iattc-rvr-compliance-guide.pdf)

and the NMFS website [http://www.westcoast.fisheries.noaa.gov/fisheries/migratory\\_species/regional\\_vessel\\_register.html](http://www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/regional_vessel_register.html).

#### Request for Comment

NMFS is soliciting comments from the public to help determine what, if any, regulatory amendments could make management of U.S. tuna purse seine vessels on the IATTC Regional Vessel Register more effective. Comments may include suggestions to improve the procedure for making requests to add vessels to the Register, for the identification of "frivolous requests for active status" and management of such requests, or how the hierarchy of prioritization of requests should be structured to allow for capacity to be utilized to the full extent possible in the most effective way. NMFS will fully consider all relevant information and comments received, and if necessary, issue proposed regulatory amendments for further consideration.

**Authority:** Tuna Conventions Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 26, 2018.

**Alan D. Risenhoover,**

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

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