

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in

#### ADDRESSES.

#### Authority

We issue this proposed rule under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

#### List of Subjects in 50 CFR Part 424

Administrative practice and procedure, Endangered and threatened species.

#### Shannon A. Estenoz

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

#### Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

#### Proposed Regulation Promulgation

For the reasons set out in the preamble, we hereby propose to amend part 424, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

#### PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

- 1. The authority citation for part 424 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

#### § 424.02 [Amended]

- 2. Amend § 424.02 by removing the definition for “Habitat”.

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 211020-0213; RTID 0648-XP016]

#### Pacific Island Pelagic Fisheries; 2022 U.S. Territorial Longline Bigeye Tuna Catch Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed specifications; request for comments.

**SUMMARY:** NMFS proposes a 2022 limit of 2,000 metric tons (t) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI), collectively “the territories”). NMFS would allow each territory to allocate up to 1,500 t to U.S. longline fishing vessels through specified fishing agreements that meet established criteria. However, the overall allocation limit among all territories may not exceed 3,000 t. As an accountability measure, NMFS would monitor, attribute, and restrict (if necessary) catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement. The proposed catch limits and accountability measures would support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

**DATES:** NMFS must receive comments by November 12, 2021.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2021–0076, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2021–0076 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 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, 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).

Pursuant to the National Environmental Policy Act, the Western Pacific Fishery Management Council (Council) and NMFS prepared a 2019 environmental assessment (EA), a 2020

supplemental environmental assessment (SEA), a 2020 supplemental information report (SIR), and a 2021 SIR that support this proposed action. The EA, SEA, and SIRs are available at

[www.regulations.gov](http://www.regulations.gov), or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, [www.wpcouncil.org](http://www.wpcouncil.org).

#### FOR FURTHER INFORMATION CONTACT:

Lynn Rassel, NMFS PIRO Sustainable Fisheries, 808–725–5184.

**SUPPLEMENTARY INFORMATION:** NMFS proposes to specify a 2022 catch limit of 2,000 t of longline-caught bigeye tuna for each U.S. Pacific territory. NMFS would also authorize each U.S. Pacific territory to allocate up to 1,500 t of its 2,000 t bigeye tuna limit, not to exceed a 3,000 t total annual allocation limit among all the territories, to U.S. longline fishing vessels that are permitted to fish under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). Those vessels must be identified in a specified fishing agreement with the applicable territory. The Council recommended these specifications.

The proposed catch limits and accountability measures are identical to those that NMFS has specified for U.S. Pacific territories in each year since 2014. The proposed individual territorial allocation limit of 1,500 t is identical to what NMFS specified for 2020 and 2021. The overall allocation limit among all of the territories may not exceed 3,000 t for the year, which is consistent with previous years. NMFS has determined that the existing EA and SEA adequately address the potential impacts on the human environment by the proposed action, and that no additional analyses are required.

NMFS will monitor catches of longline-caught bigeye tuna by the longline fisheries of each U.S. Pacific territory, including catches made by U.S. longline vessels operating under specified fishing agreements. The criteria that a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, will follow the procedures in 50 CFR 665.819. When NMFS projects that a territorial catch or allocation limit will be reached, NMFS would, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (if the territorial catch limit is projected to be reached), and/or vessels in a specified fishing agreement (if the allocation limit is projected to be reached).

NMFS will consider public comments on the proposed action and will

announce the final specifications in the **Federal Register**. NMFS also invites public comments that address the impact of this proposed action on cultural fishing in American Samoa.

NMFS must receive any comments on this proposed action by the date provided in the **DATES** heading. NMFS may not consider any comments not postmarked or otherwise transmitted by that date. Regardless of the final specifications, all other existing management measures will continue to apply in the longline fishery.

### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed specification is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

### *Certification of Finding of No Significant Impact on Substantial Number of Small Entities*

The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed action would specify a 2022 limit of 2,000 t of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI)). NMFS would also allow each territory to allocate up to 1,500 t of its 2,000 t limit, not to exceed an overall allocation limit of 3,000 t, to U.S. longline fishing vessels in a specified fishing agreement that meets established criteria set forth in 50 CFR 665.819. As an accountability measure, NMFS would monitor, attribute, and restrict (if necessary) catches of longline-caught bigeye tuna by vessels in the applicable U.S. territory (if the territorial catch limit is projected to be reached), or by vessels operating under the applicable specified fishing agreement (if the allocation limit is projected to be reached). Payments under the specified fishing agreements support fisheries development in the U.S. Pacific territories and the long-term sustainability of fishery resources of the U.S. Pacific Islands.

This proposed action would apply directly to longline vessels that hold Federal permits under the FEP,

specifically Hawaii, American Samoa, and Western Pacific General permits. In 2020, of the 164 allowable Hawaii permits, 147 were assigned to vessels active in the fishery; 24 of those were dual-permitted with both Hawaii and American Samoa permits. Forty-seven (47) had American Samoa longline permits, with 11 active in the fishery and landing catch in American Samoa. There are no active vessels with Western Pacific General permits.

Based on dealer data collected by the State of Hawaii and the Pacific Fisheries Information Network, Hawaii longline vessels landed approximately 12,655 t of pelagic fish valued at \$72.8 million in 2020. With 147 vessels making either a deep- or shallow-set trip in 2020, the ex-vessel value of pelagic fish caught by Hawaii-based longline fisheries averaged almost \$495,238 per vessel. In 2020, American Samoa-based longline vessels landed approximately 852 t of pelagic fish valued at \$2.1 million; albacore made up the largest proportion of pelagic longline commercial landings. With 11 active longline vessels in 2020, the ex-vessel value of pelagic fish caught by the American Samoa fishery averaged almost \$190,909 per vessel. In 2020, these fisheries experienced declines in prices, landings, revenue and other fishery performance measures due to the effects of travel restrictions and reduced tourism on market demand for locally caught seafood. Hawaii longline fishery revenue in 2020 was 30.4 percent lower than the average annual revenue over the previous 5 year (2015–2019) time period, while landings and prices declined by 21.9 percent and 11.5 percent compared to the average annual landings and prices over the previous 5 years. As travel and other restrictions have eased, market demand has started to resume for locally caught seafood, market prices, and fishing effort. In American Samoa, the longline fishery revenues and landings in 2020 declined 60 percent compared to the previous 5 year period.

NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) 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 \$11 million for all its affiliated operations worldwide. Based on available information, NMFS has determined that all vessels permitted federally under the Pelagic FEP are small entities, *i.e.*, they are

engaged in the business of fish harvesting (NAICS 114111), are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million. Even though this proposed action would apply to a substantial number of vessels, the implementation of this action would not result in significant adverse economic impact to individual vessels. The proposed action would potentially benefit the Hawaii longline fishermen by allowing them to fish under specified fishing agreements with a territory, which could extend fishing effort for bigeye tuna in the western Pacific and provide more bigeye tuna for markets in Hawaii and elsewhere.

In accordance with Federal regulations at 50 CFR part 300, subpart O, vessels that possess both an American Samoa and Hawaii longline permit are not subject to the U.S. bigeye tuna limit. Therefore, these vessels may retain bigeye tuna and land fish in Hawaii after the date NMFS projects the fishery would reach that limit. Further, catches of bigeye tuna made by such vessels are attributed to American Samoa, provided the fish was not caught in the U.S. Exclusive Economic Zone around Hawaii.

The 2022 U.S. bigeye tuna catch limit in the western and central Pacific Ocean (WCPO) is 3,554 t, the same as 2021. In 2021, NMFS received separate specified fishing agreements between the CNMI and the Hawaii Longline Association (HLA) and between American Samoa and HLA, each of which included a specification of 1,500 t of bigeye tuna. NMFS began allocating catches to the CNMI on August 30, 2021, prior to the U.S. fishery reaching the WCPO bigeye tuna catch limit. Based on logbooks submitted by longline vessels, the CNMI allocation would likely be reached sometime in December of 2021, at which time NMFS would begin allocating catches to American Samoa. These combined measures, including the remaining available U.S. limit and specified fishing agreements, should enable the U.S. fishery to fish through the end of 2021.

In 2022, as with prior years, under this proposed action Hawaii longline vessels could enter into one or more fishing agreements with participating territories. This would enhance the ability of these vessels to extend fishing effort in the western and central Pacific Ocean after reaching the 2022 U.S. limit and provide more bigeye tuna for markets in Hawaii. Providing opportunity to land bigeye tuna in Hawaii in the last quarter of the year when market demand is generally high

will result in positive economic benefits for fishery participants and net benefits to the nation. Allowing participating territories to enter into specified fishing agreements under this action is consistent with Western and Central Pacific Fishery Commission (WCPFC) conservation and management objectives for bigeye tuna in CMM 2018–01, and benefits the territories by providing funds for territorial fisheries development projects. Establishing a 2,000 t longline limit for bigeye tuna, where territories are not subject to WCPFC longline limits, is not expected to adversely affect vessels based in the territories.

Historical catches of bigeye tuna by the American Samoa longline fleet have been less than 2,000 t, including the catch by vessels based in American Samoa, catch by dual permitted vessels that land their catch in Hawaii, and catch attributed to American Samoa from U.S. vessels under specified

fishing agreements. Longline fishing has not occurred since 2011 in Guam or the CNMI.

Under the proposed action, longline fisheries managed under the FEP are not expected to expand substantially nor change the manner in which they are currently conducted (*i.e.*, area fished, number of vessels and trips, number and depth of hooks, or deployment techniques) due to existing operational constraints in the fleet, the limited entry permit programs, and protected species mitigation requirements. The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small organizations or government jurisdictions. Furthermore, there would be little, if any, disproportionate adverse economic impacts from the proposed action based on gear type or relative vessel size. The proposed action also will not place a substantial number of small entities, or any segment of small

entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

This action is exempt from review under Executive Order 12866.

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

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

Dated: October 21, 2021.

**Samuel D. Rauch, III,**  
*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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