

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 990212047-9047-01; I.D. 111998C]

RIN 0648-AL28

International Fisheries Regulations; Pacific Tuna Fisheries

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

ACTION: Proposed rule; implementation of Inter-American Tropical Tuna Commission (IATTC) recommendations.

SUMMARY: NMFS proposes regulations that would implement recommendations of the IATTC to conserve and manage the tuna fisheries of the Eastern Tropical Pacific Ocean (ETP). This proposed rule would provide for an annual announcement of tuna harvest quotas, closure of the U.S. fishery in the IATTC's Convention Area or the Yellowfin Regulatory Area (CYRA) when quotas have been reached, and implementation of other measures recommended by the IATTC to ensure conservation and management of fishery resources. The proposed rule also would prohibit U.S. citizens from utilizing vessels that service fish-aggregating devices (FADs) and would prohibit the transshipment at sea by U.S. purse seine vessels of purse seine-caught tuna. These proposed regulations are intended to ensure that U.S. fisheries are conducted according to the IATTC's recommendations, as approved by the Department of State.

DATES: Comments must be submitted by March 29, 1999.

ADDRESSES: Comments on the proposed rule should be sent to William T. Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562-980-4030.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure conservation and management of yellowfin and skipjack tuna and other

species of fish taken by tuna fishing vessels in the ETP. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of tuna stocks and conditions in the fisheries and recommends appropriate harvest levels (quotas) and/or other measures to prevent overexploitation and promote maximum sustainable yield. Each member country of the IATTC is responsible for enforcing quotas and other measures with respect to its own fisheries. Under the Tuna Conventions Act of 1950 the recommendations of the IATTC must be approved by the Secretary of State before they can be implemented for U.S. fisheries.

Under the IATTC quota system, the IATTC sets the annual quota at its annual meeting, usually in June. There are no restrictions on catch until IATTC proposes restrictions through a resolution. The resolution establishing the quota may include modifications of the quota based on catch and effort data collected during the year, as occurred in 1998.

At its annual meeting in June 1998, the IATTC adopted a resolution setting an initial quota of 210,000 metric tons (mt) for yellowfin tuna taken in the CYRA by member countries and recommended its adoption by member countries. This quota could be raised by up to three successive increments of 15,000 mt if the Director of Investigations of the IATTC concluded from examination of available data that such increases would pose no substantial danger to the stocks. The Department of State approved this recommendation. Had the proposed rule been in effect, the Southwest Regional Administrator would have been able to announce the quota to the owners and agents of U.S. fishing vessels by direct notice to them, with subsequent announcement of the quota in the **Federal Register**.

The yellowfin tuna quota is based on a 1998 assessment, which indicates that the yellowfin tuna stock can sustain a fishery of 270,000 to 290,000 mt per year in the CYRA. The quota of 210,000 mt for the CYRA is conservative relative to estimated maximum sustainable yields, but the IATTC recommendation allows for increases totaling 45,000 mt if fishery data indicate that the stock can sustain the added harvest. The IATTC staff report noted that the yield per recruit depends on the fishing strategy employed, with larger fish associated with dolphin and smaller fish associated with floating objects. Removing large numbers of smaller fish reduces the yield per recruit, which

reduces the amount of harvest the resource can sustain.

This proposed rule would authorize the NMFS Southwest Regional Administrator to close the U.S. fishery for yellowfin tuna or other species of tuna at such time as the IATTC Director of Investigations advises the quota will be reached. For example, at its meeting in October 1998, the IATTC was advised by the Director of Investigations that the quota for yellowfin tuna would be increased by only one increment in 1998 of 15,000 mt, to 225,000 mt, and that this quota would likely be reached by early December. On November 18, 1998, the Director of Investigations notified member countries that the yellowfin quota would be reached on November 26, 1998. Although U.S. regulations were not in place to implement the closure, the Regional Administrator requested that U.S. fishing vessel operators voluntarily cooperate with the closure. Had this proposed rule been in place for the 1998 season, the Regional Administrator would have been able to direct U.S. vessels to fish in accordance with the recommendation of the IATTC, which could include closure of the fishery, by notifying each vessel owner or agent, with subsequent publication of the requirements of the recommendation in the **Federal Register**.

A second IATTC resolution recommended that action be taken (1) to limit the catch of small bigeye tuna to 45,000 mt in 1998 by prohibiting purse seine sets on all types of floating objects in the Convention Area when this harvest level is reached; (2) to prohibit the use of tender vessels that are not capable of purse seining and whose role is to place or service FADs in the Convention Area; and (3) to prohibit the transshipment of tuna by purse seine vessels at sea in the Convention Area. The Department of State approved this recommendation as well.

The IATTC's recommendation to limit the catch of bigeye tuna was based on data indicating that the stock of bigeye tuna is being exploited at or, possibly, above a sustainable level. The increase in bigeye tuna catches has resulted from using deeper nets and setting on floating objects. This fishery has higher catches of small bigeye tuna than sets on pure schools of tuna or on yellowfin tuna associated with dolphin. The floating object fishery increased partly as a result of restrictions on sets on dolphin and now accounts for a significant portion of total tuna catch in the Convention Area. However, there is concern that bigeye catches may not be sustainable. Therefore, the IATTC recommended implementing a limit on

total catch by prohibiting sets on floating objects after 45,000 mt of bigeye tuna have been caught. At the October meeting, the IATTC was advised that the total bigeye tuna catch in 1998 would not likely reach the quota. While the floating objects fishery was not closed in 1998, the IATTC may limit the fishery in this way in future years, should circumstances require it. This proposed rule would establish a procedure for implementing such measures.

This proposed rule would prohibit the use in the Convention Area of tender vessels that do not fish but only service FADs. IATTC members, including the United States, agreed that the catch of bigeye tuna from fishing on FADs may need to be controlled, and prohibiting tender vessels would contribute to such control.

This proposed rule would prohibit the transshipment of purse seine-caught tuna at sea in the Convention Area. Landings or transshipments would have to occur in a port. This would facilitate effective monitoring of the catch relative to quotas and would support timely data collection and fishery assessment needed to determine whether the yellowfin tuna quota should be increased.

The IATTC resolution regarding yellowfin tuna includes recommendations that apply to fishing vessels after the quota is reached, such as allowing a vessel to retain 15-percent incidental harvest by weight of yellowfin tuna while fishing for other species of tuna and differing provisions that would apply to vessels depending on whether or not an observer is on board the vessel. Provisions regarding managed species may change from year to year. NMFS would notify fishermen of any resolutions adopted by the IATTC and approved by the Department of State, including any measures that apply during any closed season. NMFS would also notify fishermen when species quotas are reached and of the measures that would apply during the closed season.

Finally, this proposed rule would establish procedures for the Regional Administrator to announce other harvest quotas or implement other conservation and management measures to carry out recommendations made by the IATTC and approved by the Department of State.

A public hearing to receive comments on the resolutions of the IATTC was held on December 1, 1998, at 7:00 p.m. at the Embassy Suites Hotel, 601 Pacific Highway, San Diego, CA (63 FR 64031, November 18, 1998). Oral comments from the hearing and written comments

on this proposed rule will be considered when drafting the final rule.

Classification

This rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed action would do three things: Establish a procedure to enable the Regional Administrator (RA) to close the tuna fisheries when the IATTC advises that a quota has been or will be reached; prohibit the use of tender vessels in the Convention Area; and prohibit within the Convention Area the transshipment of tuna caught in purse seines. All of these measures would apply to U.S. vessels fishing for tuna in the Eastern Tropical Pacific (ETP). From 1993–1997, the maximum number of U.S. tuna vessels active in the ETP was 35 vessels. Of these, 27 are small entities.

None of the proposed measures would have any economic impact on small entities. The first measure is procedural, establishing a mechanism by which the RA could announce closures if directed to do so by the IATTC. Although future closures issued under this procedure could result in economic impacts, those closures are speculative at this time. They depend on the establishment and attainment of future quotas and are not being implemented through this proposed rule.

The second measure, the prohibition on the use of tender vessels, would not have any effect on the small entities subject to this proposed rule because no U.S. participants have used tender vessels in the past, and there is no known intent to employ them in the future. Likewise, the prohibition on transshipments would not affect any small entities because the U.S. fleet does not engage in at-sea transfers and there are no plans for such operations.

For these reasons, the National Marine Fisheries Service concludes that the proposed measures would not cause a 5 percent decrease in gross revenues or a 5 percent or greater increase in costs of production or compliance; cause compliance costs as a percent of sales to be 10 percent or more higher for small entities than for large entities; or cause any increase in capital costs of compliance for any small entities. Nor would they result in 2 percent or more of the small entities affected being forced to cease business operations. Therefore, no Initial Regulatory Flexibility Analysis has been prepared for this action.

The Regional Administrator determined that fishing activities conducted pursuant to this rule will not affect endangered and threatened species or critical habitat under the Endangered Species Act.

This action is consistent with the Marine Mammal Protection Act, as amended by the International Dolphin Conservation Program Act.

List of Subjects in 50 CFR Part 300

Fisheries, High seas fishing, International agreements, Reporting and recordkeeping requirements, Permits.

Dated: February 22, 1999.

Rolland A. Schmitten,

*Assistant Administrator for Fisheries,
National Marine Fisheries Services.*

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 C—Pacific Tuna Fisheries

1. The authority citation for subpart C continues to read as follows:

Authority: 16 U.S.C. 951-961 and 971 *et seq.*

2. Section 300.20 is revised to read as follows:

§ 300.20 Purpose and scope.

The regulations in this subpart implement the Tuna Conventions Act of 1950 (Act) and the Atlantic Tunas Convention Act of 1975. The regulations provide a mechanism to carry out the recommendations of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean so far as they affect vessels and persons subject to the jurisdiction of the United States. They also carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas for the conservation of bluefin tuna, so far as they affect vessels and persons subject to the jurisdiction of the United States.

3. Section 300.21 is amended by removing the definition of "Regional Director" and adding definitions for "Bigeye tuna", "Commission's Yellowfin Regulatory Area (CYRA)", "Convention Area", "Fish aggregating device (FAD)", "Fishing trip", "Floating object", "Incidental catch or incidental species", "Land or Landing", "Observer", "Regional Administrator", "Tender vessel", "Transship", and "Transshipment receiving vessel" in alphabetical order, to read as follows:

§ 300.21 Definitions.

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Bigeye tuna means the species *Thunnus obesus*.

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Commission's Yellowfin Regulatory Area (CYRA) means the waters bounded by a line extending westward from the mainland of North America along the 40° N. latitude parallel, and connecting the following coordinates:

- 40° N. lat., 125° W. long.;
20° N. lat., 125° W. long.;
20° N. lat., 120° W. long.;
5° N. lat., 120° W. long.;
5° N. lat., 110° W. long.;
10° S. lat., 110° W. long.;
10° S. lat., 90° W. long.;
30° S. lat., 90° W. long.;

and then eastward along the 30° S. latitude parallel to the coast of South America.

Convention Area means the waters within the area bounded by the mainland of the Americas, lines extending westward from the mainland of the Americas along the 40° N. lat. and 40° S. lat., and 150° W. long.

Fish aggregating device (FAD) means a manmade raft or other floating object used to attract tuna and make them available to fishing vessels.

Fishing trip means a period of time between landings when fishing is conducted.

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Floating object means any natural object or FAD around which fishing vessels may catch tuna.

Incidental catch or incidental species means species caught while fishing with the primary purpose of catching a different species. An incidental catch is expressed as a percentage of the weight of the total fish on board.

Land or Landing means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish on board the vessel are counted as part of the landing.

Observer means an individual placed aboard a fishing vessel under the IATTC observer program or any other international observer program in which the United States may participate.

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Regional Administrator means the Administrator, Southwest Region, NMFS.

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Tender vessel means a vessel that does not engage in purse seine fishing but tends to FADs in support of tuna fishing operations.

Transship means to unload fish from a vessel that caught fish to another vessel.

Transshipment receiving vessel means any vessel, boat, ship, or other craft that is used to receive fish from a fishing vessel.

4. In § 300.28, the section heading is revised, paragraphs (a) through (c) are redesignated as (e) through (g), and new

paragraphs (a) through (d) are added to read as follows:

§ 300.28 Prohibitions.

* * * * *

(a) Land any species of tuna during the closed season for that species in excess of the amount allowed by the Regional Administrator.

(b) Fish with purse seine gear on floating objects in the Convention Area after the Regional Administrator has closed the fishery on floating objects in that area.

(c) Use tender vessels in the Convention Area.

(d) Transship purse seine-caught tuna at sea within the Convention Area.

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5. Section 300.29 is added to subpart C to read as follows:

§ 300.29 Eastern Pacific fisheries management.

(a) Notification of IATTC recommendations. The Regional Administrator will directly notify owners or agents of U.S. tuna vessels of any fishery management recommendations made by the IATTC and approved by the Department of State that will affect fishing or other activities by U.S. parties with fishery interests in the Convention Area. As soon as practicable after such notification, NMFS will announce approved IATTC recommendations in the Federal Register.

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

(2) The Regional Administrator may close the U.S. fishery for yellowfin, bigeye, or skipjack tuna or any other tuna species in the Convention Area or portion of the Convention Area when advised by the Director of Investigations of the IATTC that the associated quota has been or is projected to be reached. Any such closure may include:

(i) An allowance for an incidental catch that may be landed while fishing for other tuna species;

(ii) A prohibition on the further setting of purse seines on floating objects by U.S. vessels in the Convention Area;

(iii) Provisions for vessels that are at sea during an announced closure to fish unrestricted until the fishing trip is completed;

(iv) Provisions for vessels at sea with an observer on board during any closure to land fish unrestricted if the landing occurs after December 31; or

(v) Other measures to ensure that the conservation and management measures of the IATTC are achieved.

(3) NMFS will announce any such closures directly to the owners or agents of U.S. vessels who are fishing in or eligible to fish in the Convention Area.

(4) As soon as practicable after being advised of the quota attainment or projection under paragraph (b)(2) of this section, NMFS will publish an announcement of the closure in the Federal Register.

(c) Use of tender vessels. No person subject to these regulations may use a tender vessel in the Convention Area.

(d) Transshipments at sea. No person subject to these regulations may transship purse seine-caught tuna from one vessel to another vessel at sea within the Convention Area.

PART 300—[AMENDED]

6. In addition to the amendments set forth under the authority of 16 U.S.C. 773 et seq.; 16 U.S.C. 951-961 and 971 et seq.; 16 U.S.C. 973-973r; 16 U.S.C. 2431 et seq.; 16 U.S.C. 3371-3378; 16 U.S.C. 3636(b); 16 U.S.C. 5501 et seq.; and 16 U.S.C. 1801 et seq., in part 300, revise all references to "Regional Director" to read "Regional Administrator".

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 990217050-9050-01; I.D. 010799A]

RIN 0648-AM17

Atlantic Highly Migratory Species Fisheries; Fishery Management Plan; Atlantic Bluefin Tuna Fishery

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

ACTION: Notice of availability and proposed rule; supplemental.

SUMMARY: NMFS by an earlier document proposed regulations to implement the draft Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks (Highly Migratory Species or HMS). NMFS has prepared an addendum to the draft HMS FMP (the Addendum). This document announces the availability of the Addendum for public comment and supplements the earlier document by proposing supplemental regulations to implement the Addendum. The supplemental