

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 300**

[Docket No. 021021241-2294-02; I.D. 083002E]

RIN 0648-AP86

International Fisheries; Pacific Tuna Fisheries

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

ACTION: Final Rule; 2002 Management Measures for Yellowfin and Juvenile Bigeye Tuna

SUMMARY: NMFS issues a final rule to implement the 2002 management measures to prevent overfishing of eastern tropical Pacific (ETP) tuna stocks pursuant to recommendations by the Inter-American Tropical Tuna Commission (IATTC). These measures have been approved by the Department of State (DOS) under the terms of the Tuna Conventions Act. The purse seine fishery for tuna in the Convention Area will be closed the month of December, 2002. This action is taken to limit total fishing mortality caused by purse seine fishing in the Convention Area and thus prevent overfishing and maintain the tuna stocks at sustainable levels. In addition, the current bycatch reduction pilot program scheduled to run through 2002 is extended through 2004.

DATES: The purse seine tuna fishery closure is effective December 1, 2002, through December 31, 2002. The termination date for the bycatch reduction program is extended from January 2, 2003, to December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562-980-4040.

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 (IATTC) signed in 1949. The IATTC was established to provide an international arrangement to ensure effective international conservation and management of highly migratory species of fish in the Convention Area. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to

prevent overexploitation of the stocks and promote sustainable fisheries. The Convention Area is defined to include waters of the eastern Pacific Ocean (EPO) bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian.

At its annual meeting June 26-28, 2002, the IATTC adopted a resolution dealing with conservation of ETP tuna stocks. The IATTC considered the use of quotas and partial fishery closures as in 1999, 2000, and 2001; however, after reviewing the administration of these quotas and partial closures and the occasions of non-compliance that resulted, the IATTC recommended that the Convention Area be closed during December 2002. This approach will provide substantial protection against overfishing in a manner that is fair and equitable and enforceable. There will be no need to investigate catch records to determine if incidental catch limits have been exceeded or to distinguish between activities inside and outside the IATTC's Commission Yellowfin Regulatory Area. The Department of State (DOS) approved this recommendation on August 7, 2002.

The closure is based on 2002 assessments of the condition of the tuna stocks in the ETP and the administrative records relating to implementation of quotas in prior years. The assessments indicate that the stocks are healthy, though there is significant uncertainty with respect to the bigeye assessment. The closure is believed to be sufficient to prevent overfishing of any tuna stock.

In addition, the IATTC recommended that the purse seine bycatch reduction and sea turtle conservation measures initially implemented in 2001 and extended through 2002 be further extended through 2004. The DOS approved this measure as well.

A proposed rule to implement these measures was published in the **Federal Register** on November 4, 2002 (67 FR 67139). The public comment period ended on November 19, 2002, and no comments were received.

This document is published under procedures in the Tuna Conventions Act of 1950, which authorizes rules to implement IATTC recommendations that have been approved by the DOS. For the reasons stated here and in accordance with the Tuna Conventions Act of 1950 and its implementing regulations, and consistent with the IATTC recommendation: (1) fishing for tuna by purse seine vessels in the ETP is prohibited from December 1, 2002, through December 31, 2002; (2) no species of tuna may be on board a purse seine vessel in the ETP from December 1, 2002, through December 31, 2002;

and (3) any tuna purse seine vessel that normally fishes in the ETP must be in port for the month of December 2002, except that a vessel may transit the ETP to or from the western Pacific (i.e., west of 150° W. longitude) as long as there is an observer on board the vessel who is acting under the authority of the International Dolphin Conservation Program.

Changes from the Proposed Rule

This final rule includes several changes from the proposed rule to be more explicit and in detailed conformance with the IATTC resolution. Specifically, the requirements that prohibit ETP tuna purse seine vessels from possessing tuna and that require ETP tuna purse seine vessels to be in port for the month of December are added as in the IATTC recommendation. It had not been thought necessary to include these in the proposed rule as there was no reason to expect that these vessels would not be at port or would possess tuna in the closure period. However, these were specific provisions of the IATTC recommendation and therefore should be explicit provisions of the final rule. This should not affect the activity of U.S. tuna purse seine fishing vessels. The provision regarding vessels transiting the ETP was also added for clarity; this is an ongoing requirement, but it was specifically included in the IATTC recommendation and is therefore included in the final rule. The transit provision is beneficial for U.S. tuna purse seine fishing vessels that may want to deliver western Pacific-caught tuna to canneries in eastern Pacific nations or that wish to travel from a West Coast port to the western Pacific. These impacts are discussed in the Classification section.

Comments and Responses

No comments were received during the comment period for the proposed rule (67 FR 67139, November 4, 2002), which ended November 19, 2002.

Classification

This action is authorized by the Tuna Conventions Act, 16 U.S.C. 951-961 and 971 *et seq.*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding the economic impacts of this action. As a result, no

regulatory flexibility analysis was prepared.

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

The Assistant Administrator for Fisheries finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the 30-day delay in the effective date of this final rule as failure to implement the closure

as recommended by the IATTC could reduce the ability of the United States to promote full and complete compliance with IATTC recommendations by all parties as well as non-parties to the IATTC. This would jeopardize the continued effectiveness of the IATTC measures to conserve and manage the stocks under its purview.

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

Dated: November 29, 2002.

Rebecca Lent,

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

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