

services authorized by an I/T/U consistent with part 136 of this title or section 503(a) of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, as amended, 25 U.S.C. 1653(a).

(j) *No additional charges.* A payment made in accordance with this section shall constitute payment in full and the hospital or its agent may not impose any additional charge—

- (1) On the individual for I/T/U authorized items and services; or
- (2) For information requested by the I/T/U or its agent or fiscal intermediary for the purposes of payment determinations or quality assurance.

§ 136.31 Authorization by urban Indian organization.

An urban Indian organization may authorize for purchase items and services for an eligible urban Indian (as those terms are defined in 25 U.S.C. 1603(f) and (h)) according to section 503 of the IHCIA and applicable regulations. Services and items furnished by Medicare-participating inpatient hospitals shall be subject to the payment methodology set forth in § 136.30.

§ 136.32 Disallowance.

(a) If it is determined that a hospital has submitted inaccurate information for payment, such as admission, discharge or billing data, an I/T/U may as appropriate—

(1) Deny payment (in whole or in part) with respect to any such services, and;

(2) Disallow costs previously paid, including any payments made under any methodology authorized under this subpart. The recovery of payments made in error may be taken by any method authorized by law.

(b) For cost based payments previously issued under this subpart, if it is determined that actual costs fall significantly below the computed rate actually paid, the computed rate may be retrospectively adjusted. The recovery of overpayments made as a result of the adjusted rate may be taken by any method authorized by law.

■ The Centers for Medicare & Medicaid Services is amending 42 CFR Chapter IV, as set forth below:

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ 3. The authority citation for part 489 continues to read as follows:

Authority: Sec. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Essentials of Provider Agreements

- 4. A new § 489.29 is added to subpart B to read as follows:

§ 489.29 Special requirements concerning beneficiaries served by the Indian Health Service, Tribal health programs, and urban Indian organization health programs.

(a) Hospitals (as defined in sections 1861(e) and (f) of the Social Security Act) and critical access hospitals (as defined in section 1861(mm)(1) of the Social Security Act) that participate in the Medicare program and furnish inpatient hospital services must accept the payment methodology and no more than the rates of payment established under 42 CFR part 136, subpart D as payment in full for the following programs:

(1) A contract health service (CHS) program under 42 CFR part 136, subpart C, of the Indian Health Service (IHS);

(2) A CHS program under 42 CFR part 136, subpart C, carried out by an Indian Tribe or Tribal organization pursuant to the Indian Self-Determination and Education Assistance Act, as amended, Public Law 93–638, 25 U.S.C. 450 *et seq.*; and

(3) A program funded through a grant or contract by the IHS and operated by an urban Indian organization under which items and services are purchased for an eligible urban Indian (as those terms are defined in 25 U.S.C. 1603 (f) and (h)).

(b) Hospitals and critical access hospitals may not refuse service to an individual on the basis that the payment for such service is authorized under programs described in paragraph (a) of this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070215036–7107–02; I.D. 012307A]

RIN 0648–AU79

International Fisheries; Pacific Tuna Fisheries; Restrictions for 2007 Purse Seine and Longline Fisheries in the Eastern Tropical Pacific Ocean

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to implement the 2007 management measures to reduce overfishing of the eastern tropical Pacific Ocean (ETP) tuna stocks in 2007, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS) under the Tuna Conventions Act. The U.S. purse seine fishery for yellowfin, bigeye, and skipjack tunas in the ETP will be closed for a 6-week period beginning August 1, 2007, through September 11, 2007. The longline fishery for bigeye tuna will close when a 500 metric ton (mt) limit has been reached. These actions are taken to limit fishing mortality caused by purse seine fishing and longline fishing in the ETP and contribute to long-term conservation of the tuna stocks at levels that support healthy fisheries.

DATES: The 2007 purse seine fishery closure for yellowfin, bigeye, and skipjack tunas is effective on 12:00 a.m. Pacific Time, August 1, 2007, through 11:59 p.m. Pacific Time, September 11, 2007. For 2007, NMFS will close the bigeye longline fishery through appropriate procedures to ensure that the bigeye longline tuna catch does not exceed 500 mt.

ADDRESSES: Copies of the regulatory impact review/final regulatory flexibility analysis (FRFA) may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: J. Allison Routh, Sustainable Fisheries Division, Southwest Region, NMFS, (562) 980–4030.

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register**'s website at <http://www.gpoaccess.gov/>

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established by international agreement through the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), which was signed in 1949. The IATTC was established to ensure the effective international conservation and management of highly migratory species of fish in the ETP. For the purposes of these closures, the ETP is defined to include the waters bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian. 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 viable fisheries.

In June 2006, the IATTC adopted a *Resolution for a Program on the Conservation of Tuna in the Eastern Pacific Ocean for 2007*. The June 2006 resolution is a 1-year program on the conservation of tuna in the ETP for 2007. This resolution offers a choice for closing the purse seine fishery: either a 6-week closure beginning August 1, 2007, or a 6-week closure beginning November 20, 2007. The resolution of June 2006 incorporated flexibility for nations to administer the purse seine closure in accordance with national legislation and national sovereignty. The selected measure should reduce overfishing in a manner that is fair, equitable, and readily enforceable.

A proposed rule to carry out the IATTC-recommended and DOS-approved closures for the ETP purse seine and longline tuna fisheries for 2007 was published in the **Federal Register** on February 26, 2007 (72 FR 8333). Under the Tuna Conventions Act, 16 U.S.C. 951–961 and 971 *et seq.*, NMFS must publish regulations to carry out IATTC recommendations and resolutions that have been approved by DOS.

For the target tuna stocks (yellowfin, bigeye, and skipjack) of this resolution, NMFS believes there may be a modest biological advantage for choosing one closure period over the other because the summer closure would foreclose opportunistic fishing by the southern California small purse seine fleet. This fleet does not fish for the target tuna stocks during the winter months when the target tuna stocks are not available within the range of the fleet's smaller vessels. NMFS also looked at possible economic advantages for determining which closure period to select. As discussed in response to comment 2, NMFS believes there may be value in evaluating whether a summer closure may be less of an economic burden to U.S. interests than a winter closure. For 2007, NMFS has selected the closure beginning August 1, 2007, through September 11, 2007. All purse seine gear used to target yellowfin, bigeye, and skipjack tunas must be out of the water in the ETP and no yellowfin, bigeye, or skipjack tunas may be retained for the 6-week period beginning August 1, 2007, through September 11, 2007.

This final rule also provides that the U.S. longline fishery for bigeye tuna in

the ETP will close for the remainder of the calendar year 2007 after the catch of bigeye by U.S. longline vessels reaches 500 mt. This closure will prohibit deep-set longline gear from being deployed and retaining bigeye tuna in the ETP. Longline vessels will not be subjected to this closure if the permit holder declares to NMFS under the Fishery Management Plan (FMP) for the Pelagic Fisheries of the Western Pacific Region that they intend to shallow-set to target swordfish (50 CFR 665.23). NMFS will close the longline fishery through appropriate procedures so that the 500 mt limit is not exceeded. These actions ensure that U.S. vessels fish in accordance with the conservation and management measures that the IATTC recommended in June 2006.

Comments and Responses

During the comment period for the proposed rule, NMFS received four comments. Comments were received from tuna vessel owners, tuna industry organizations, and a member of the public. Key issues and concerns are summarized below and responded to as follows:

Timing of the Closures

Comment 1: Comments supporting the closure period of August 1, 2007, through September 11, 2007, were received from U.S. large-scale purse seine vessel owners. They noted that in past years, they chose not to fish during the winter as inclement weather on the normal fishing grounds makes fishing difficult and there was an expectation that they could secure dockyard space and conduct vessel repairs during this period. However, during the winter closures in the ETP for years 2004–2006, vessel owners wasted much time in securing dockyard space due to competition for space with other nations. They expressed an interest in using the summer closure for one year to determine if vessel repairs could be conducted more efficiently during the summer closure period relative to past experience.

Response: NMFS understands that the U.S. large-scale purse seine vessel owners prefer the summer closure for 2007 as they envision that this choice may have economic benefits that have not been realized during the past three years when U.S. purse seine vessels were subject to a winter closure. In addition to the potential for a modest conservation benefit, discussed above, adopting the summer closure option for 2007 would allow NMFS to evaluate whether an economic benefit can be realized.

Comment 2: Two commenters expressed a preference for the winter closure for 2007. These comments stated that their ETP operations are based in Ecuador, and Ecuador in past years has chosen the summer closure. Assuming Ecuador's preferred closure will again be the summer period and the United States chooses the winter closure, this will provide some consistent distribution of their fish supply throughout the year. If the United States chooses the summer closure and Ecuador chooses the summer closure for 2007, their concern is that their fish supply opportunities will be limited.

Response: In the years 2004 - 2006, nations party to the IATTC evenly choose the summer and winter closure periods. NMFS believes as in years past, nations party to the IATTC will again evenly choose the summer and winter closure periods and that the global supply of tuna will be balanced and available for purchase to market. At this time, the United States cannot anticipate the closure period Ecuador will select for 2007. Consequently, the U.S. closure period may or may not coincide with Ecuador's.

2007 U.S. Longline Catch

Comment 3: A commenter stated that longlines should be banned permanently and totally forever, but noted that the longline season, as outlined, should be closed at a minimum of August 1 through December 1. The commenter added that the failure to adequately stem overfishing is reflected by this paucity of closure.

Response: The longline tuna fishery closure in the ETP was negotiated on a multilateral basis and strikes a balance between the many competing interests. The nations party to the IATTC prefer to set national quotas rather than time/area closures for this gear type. This final rule provides that the U.S. longline fishery for bigeye tuna in the ETP will close for the remainder of the calendar year 2007 when the catch by U.S. longline vessels reaches 500 mt.

Classification

This action is consistent with the Tuna Conventions Act and with the regulations governing the Pacific Tuna Fisheries at 50 CFR 300.25.

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

An FRFA was prepared that describes the economic impacts of this final rule. A copy of this analysis is available from NMFS (see **ADDRESSEES**). Responses to comments received on the economic impact of the proposed rule were

provided above. A summary of the FRFA follows.

A description of the need for and objectives of this rule is included in the preamble and not repeated here.

The purse seine closure applies to the U.S. tuna purse seine fleet that targets yellowfin, bigeye, and skipjack tunas. The fleet consists of five to ten small vessels (carrying capacity below 400 short tons (363 mt)) and one to two large vessels (carrying capacity 400 short tons (363 mt) or greater). The large vessels usually fish outside U.S. waters and deliver their catch to foreign ports or tranship to processors outside the mainland United States. The large vessels are categorized as large business entities (revenues in excess of \$4 million per year). A large purse seine vessel typically generates 4,000 to 5,000 mt of tuna valued at between \$4 and \$5 million per year. The closure should not significantly affect the operations of the one to two large vessels because they are capable of fishing, and do fish, in other areas that would remain open.

The small vessels are categorized as small business entities (average annual revenues below \$4 million per year). They fish out of California in the U.S. EEZ most of the year for small pelagic fish (Pacific sardine, Pacific mackerel) and for market squid in summer. Some small vessels harvest yellowfin and skipjack tunas seasonally when they are available. The southern California purse seine fishery opportunistically fishes for tropical tunas when the tropical tunas migrate further north and within range of these vessels, which are not equipped for long-range excursions. Specifically, yellowfin and skipjack tunas intermittently migrate within range of these vessels. However, predicting their movements is uncertain. Tuna landings reported by the Pacific States Marine Fisheries Commission show that since 2001, yellowfin and skipjack tunas can be landed by this southern California purse seine fishery during the months of August, September, and October, although the bulk of these landings occur in September. However, this is not always the case. For example, neither yellowfin nor skipjack tunas ventured close enough to the range of the southern California small purse seine fleet in 2006 resulting in zero landings. For the summer purse seine fishery closure option, this fishery would be precluded from fishing in August and for 11 days in September which still provides the fishery the opportunity to operate for the remainder of September as well as the month of October. In addition, the southern California small purse seine fleet periodically lands albacore and bluefin

tunas which are not covered under the IATTC resolution of June 2006 and therefore can be fished during either closure option. It appears that bluefin tuna may also be the preferred species targeted by this fleet as bluefin provide a higher ex-vessel value than either yellowfin or skipjack tunas.

The existing California based longline fishery, which consists of one vessel, targets bigeye tuna. For the tuna longline fleet operating out of Hawaii, there is a maximum of 164 permits available, and 125 active longline vessels participated in the fishery in 2005. The California and Hawaii longline fleets are categorized as small business entities (average annual revenues below \$4 million per year). The Hawaii longline fleet, which targets bigeye tuna and swordfish, has traditionally operated outside the boundaries of the ETP. However, in recent years, some vessels of the tuna longline fleet operating out of Hawaii have operated within the boundaries of the ETP. In 2004, 2005, and 2006, the California and Hawaii based longline fishery was limited to 150 mt of bigeye tuna in the ETP. For each of these three years, the 150 mt limit was reached in the ETP and the longline fishery for bigeye tuna was closed. A closure would affect operations of both longline fleets. However, the California based longline fleet is capable of fishing for other species of fish with other gear types in the ETP which should mitigate the effects of any closure. For example, the closure has occurred in the past several years beginning in the summer months when North Pacific albacore tuna appear on the west coast and vessels can switch to surface troll gear to participate in that fishery. Similarly, the Hawaii based longline fleet also fishes for swordfish and can also direct its efforts at bigeye tuna outside the ETP. Because both fleets are capable of fishing for other species, or in the case of the Hawaii longline fleet, in other areas outside the ETP that would remain open, they have the opportunity to continue to fish during the closure.

This rule does not impose reporting or recordkeeping requirements, and the compliance requirements for the closure areas are as described at the outset of this summary.

NMFS considered three alternatives for this final rule: a 6-week summer closure of the purse seine fishery from August 1 through September 20 of 2007, a 6-week winter closure of the purse seine fishery from November 20 through December 31, 2007, or no closures at all. The summer closure best satisfies the objectives of the resolution and the statute to conserve tuna stocks by

prohibiting purse seine fishing for the target tuna stocks during the only time when the small purse seine fleet out of southern California might engage in opportunistic fishing for yellowfin, bigeye, and skipjack tuna. The opportunistic chance for the southern California small purse seine fleet to target yellowfin, bigeye, and skipjack tunas is not available in the winter as the tropical tunas do not migrate within the range of these vessels, which are not equipped for long-range excursions, during the winter season. While such fishing is only a very small portion of the overall catch of these species, NMFS believes that by foreclosing this additional fishing opportunity, the summer closure may provide a slightly greater conservation benefit than the winter closure.

The August 1 – September 11 closure alternative may have a slightly greater economic impact on small entities than the November 20 December 31 closure because the additional fishing opportunity for the southern California small purse seine fleet will not be available during the closure period, though this impact is not expected to be significant. The southern California small purse seine fishery normally fishes for coastal pelagic species such as Pacific sardines, Pacific mackerel and market squid. Fishing for these species of fish is not affected by this closure. In recent years, the seasonal tuna harvest has amounted to no more than 5–7% of the total catch for these vessels. The seasonal tuna catch is also intermittent - as stated previously, neither yellowfin nor skipjack tunas ventured close enough to the range of the southern California small purse seine fleet in 2006 resulting in zero landings. Based on an average since 2001, the economic impact on small entities in the California small purse seine fleet who opportunistically are able to target yellowfin, bigeye, and skipjack tunas is less than \$0.5 million. Because the opportunity to fish seasonally for yellowfin, bigeye, and skipjack tuna will be available after the closure, during the latter half of September and for the month of October, the economic impact is likely to be less than \$0.5 million on average. The ex-vessel value of all small purse seine vessels fishing for coastal pelagic species was \$43.5 million in 2005. Therefore NMFS does not believe that the summer closure and an average of less than \$0.5 million not realized for the southern California small purse seine fleet will be significant.

NMFS considered the option of a 6-week closure during the winter season beginning on November 20, 2007. Given that NMFS believes the summer closure

may provide a slightly greater conservation benefit than the winter closure, and that NMFS believes it is reasonable to evaluate whether the winter closure will allow fishery participants to realize an economic benefit pertaining to vessel operations, NMFS did not choose this alternative.

NMFS also considered the alternative of not implementing the 2006 IATTC Tuna Conservation Resolution. This alternative would have imposed no economic costs on small entities. However, failure to implement measures that have been agreed to pursuant to the Convention would violate the United States' obligations under the Convention, and would violate the Tuna Conventions Act.

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

Dated: May 29, 2007.

Samuel D. Rauch III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070326070-7110-02; I.D. 032107A]

RIN 0648-AV47

Pacific Halibut Fisheries; Guided Sport Charter Vessel Fishery for Halibut

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to restrict the harvest of halibut by persons fishing on a guided sport charter vessel in International Pacific Halibut Commission (IPHC) Regulatory Area 2C. The current sport fishing catch or bag limit of two halibut per day is changed for a person sport fishing on a charter vessel in Area 2C. The final rule would require at least one of the two fish taken in a day to be no more than 32 inches (81.3 cm) in length. This regulatory change is necessary to reduce the halibut harvest in the charter vessel sector while minimizing negative impacts on this sector, its sport fishing clients, and the coastal communities that serve as home ports for the fishery. The intended effect of this action is a

reduction in the poundage of halibut harvested by the guided sport charter vessel sector in Area 2C.

DATES: Effective June 1, 2007.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action are available from: NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; NMFS, Alaska Region, 709 West 9th Street, Room 420, Juneau, AK; or NMFS Alaska Region Website at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, telephone (907) 586-7228, e-mail jay.ginter@noaa.gov; or Jason Gasper, telephone (907) 586-7228, e-mail jason.gasper@noaa.gov.

SUPPLEMENTARY INFORMATION: The IPHC and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed in Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention signed at Washington, D.C., on March 29, 1979. The IPHC's regulations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). Approved regulations developed by the IPHC are published as annual management measures pursuant to 50 CFR 300.62. The annual management measures for 2007 were published on March 14, 2007 (72 FR 11792).

The Halibut Act provides the Secretary with the authority and general responsibility to carry out the requirement of the Convention and Halibut Act. Regulations that are not in conflict with approved IPHC regulations may be recommended by the North Pacific Fishery Management Council (Council) and implemented by the Secretary through NMFS to allocate harvesting privileges among U.S. fishermen in and off of Alaska. The Council has exercised this authority, most notably in the development of its Individual Fishing Quota (IFQ) Program, codified at 50 CFR part 679, and subsistence halibut fishery management measures, codified at 50 CFR 300.65. The Council also has been developing a regulatory program to manage the guided sport charter vessel fishery for

halibut and is continuing this work. This program could include harvest restrictions in regulatory Area 2C and 3A for 2008, and a moratorium on new entry into the Area 2C and Area 3A charter vessel fishery.

Background and Need for Action

The background and need for this action were described in the preamble of the proposed rule published in the **Federal Register** on April 6, 2007 (72 FR 17071). In summary, this final rule will reduce sport fishing mortality of halibut in the Area 2C charter vessel sector to a level comparable to the level that would have been achieved by the one-fish bag limit recommended by the IPHC. Of the alternatives analyzed in the EA/RIR/FRFA, the alternative selected for the final rule is expected to provide the necessary level of harvest reduction while also reducing adverse impacts on the charter fishery, its sport fishing clients, the coastal communities served by the charter sector, and on the fisheries for other species.

The harvest of halibut occurs in three basic fisheries the commercial, sport, and subsistence fisheries. An additional amount of fishing mortality occurs as bycatch, wastage, and incidental catch while targeting other species. The IPHC annually determines the amount of halibut that may be removed from a regulatory area without causing biological conservation concerns for the entire Pacific halibut stock. In Convention waters in and off Alaska, the IPHC sets an annual catch limit specific for the commercial fishery. Thus, to maintain conservation goals, the IPHC reduces commercial catch when other sources of fishing mortality (e.g., sport fishing) grow. Although most of the non-commercial uses of halibut have been stable, growth in the charter vessel fishery in recent years, particularly in Area 2C, has resulted in a shift of the halibut resource away from the commercial fishery to the charter fishery. Moreover, the rate of growth in the charter vessel sector in Area 2C has made it difficult for the IPHC to forecast future removals of halibut in the charter vessel sector and set appropriate commercial harvest limits.

The IPHC addressed the increase in the harvest of halibut by the charter vessel fishery at its annual meeting in January 2007. The IPHC adopted a motion to reduce the daily bag limit for anglers fishing on charter vessels in Areas 2C and 3A from two halibut to one halibut per day during certain time periods. Specifically, the IPHC recommended a one-fish bag limit apply to guided anglers in Area 2C from June 15 through July 30, and in Area 3A from