

TABLE 6.—NO_x COMPLIANCE SCHEDULES FOR CEMENT KILNS IN ELLIS COUNTY UNDER CHAPTER 117

| Source | Compliance date | Additional information | Citation |
|--------------------------------|--|--|-----------|
| Cement Kilns—Ellis County | Comply with testing, monitoring, notification, recordkeeping, and reporting requirements as soon as practicable but no later than March 1, 2009. | 8-hour attainment demonstration requirement. | 117.9320. |

We believe that including the compliance dates in the rule provides for enforceability and practicability of the NO_x rule, and enhances the Texas SIP. The March 1, 2009 compliance date for cement kilns in Ellis County is consistent with the implementation requirement set forth in 40 CFR 51.912(a)(3). Therefore, we are proposing their approval into Texas SIP, and as meeting the RACT requirement for the D/FW 8-hour ozone nonattainment area.

III. Proposed Action

Today, we are proposing to approve revisions to the 30 TAC Chapter 117 into Texas SIP. In this rulemaking we are proposing to approve the cement kilns provisions of the May 30, 2007 submittal for cement kilns operating in Bexar, Comal, Ellis, Hays, and McLennan Counties of Texas. We are also proposing to approve the May 30, 2007 submittal as meeting the RACT requirements for NO_x emissions from cement kilns operating in the D/FW 8-hour ozone nonattainment area. These NO_x reductions will assist the D/FW area to attain the 8-hour ozone NAAQS, and enhance the Texas SIP.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 1, 2008.

Richard E. Greene,
Regional Administrator, Region 6.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

[Docket No. 070717339–8765–02]

RIN 0648–AV37

International Fisheries; Pacific Tuna Fisheries; Revisions to Regulations for Vessels Authorized To Fish for Tuna and Tuna-like Species in the Eastern Tropical Pacific Ocean and to Requirements for the Submission of Fisheries Certificates of Origin

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

ACTION: Proposed rule; collection-of-information requirements; request for comments.

SUMMARY: NMFS proposes to revise regulations governing vessels authorized by the United States to fish for tuna and tuna-like species in the eastern tropical Pacific Ocean (ETP). This proposed rule would update and clarify regulations promulgated by NMFS to implement the Marine Mammal Protection Act, the Tuna Conventions Act, the Dolphin Protection Consumer Information Act, and resolutions adopted by the Inter-American Tropical Tuna Commission (IATTC) and by the Parties to the Agreement on the International Dolphin Conservation Program (AIDCP). This proposed rule would modify the procedures and requirements for the Vessel Register, the list of vessels authorized to fish for tuna and tuna-like species in the ETP. Requirements for the submission of certifications by importers would also be revised. This proposed rule is intended to clarify the regulations, facilitate management of U.S. vessels, and update the regulations to be consistent with resolutions adopted by the members of the IATTC and the Parties to the AIDCP.

DATES: Comments on the proposed regulations and collection-of-information requirements must be received by 5 p.m. Pacific Standard Time, on August 11, 2008. A public

hearing will be held on July 28, 2008, at 9 a.m.

ADDRESSES: You may submit comments on the proposed rule and on the collection of information requirements, identified by RIN 0648-AV37, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (562) 980-4027, Attention: Susan Wang.

- *Mail:* Submit written comments to Susan Wang, National Marine Fisheries Service, Southwest Region, Protected Resources Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Southwest Region and by e-mail to David_Rostker@omb.eop.gov, or by fax to (202) 395-7285.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (please enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

A public hearing will be held at NMFS, Southwest Regional Office, 501 West Ocean Boulevard, Suite 3400, Long Beach, CA 90802-4213. Photo identification is required to enter the building.

FOR FURTHER INFORMATION CONTACT: Susan Wang, NMFS, Southwest Region, Protected Resources Division, at (562) 980-4199.

SUPPLEMENTARY INFORMATION:

Background

The United States is a member of the IATTC, established in 1949 under the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention). The IATTC provides an international forum to ensure the effective conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include

waters of the ETP bounded by the coast of the Americas, the 40° N. latitude and 40° S. latitude, and the 150° W. longitude (50 Code of Federal Regulations (CFR) section 300.21). The IATTC oversees fishery management issues, such as assessing the status of tuna stocks, managing the cumulative capacity of vessels fishing in the Convention Area, addressing bycatch of non-target and protected species, and imposing time-area closures to conserve tuna stocks. Resolutions under the IATTC are adopted by consensus and are binding on the members of the IATTC. Members of the IATTC and cooperating non-members are responsible for implementation of IATTC resolutions. In the United States, the Tuna Conventions Act (16 U.S.C. 951 *et seq.*) authorizes the Secretary of Commerce to promulgate regulations implementing IATTC resolutions. The Secretary's authority has been delegated to the Assistant Administrator for Fisheries, NMFS.

The United States is also a Party to the AIDCP. The AIDCP was established in May 1998 when eight nations, including the United States, signed a binding, international agreement to implement the International Dolphin Conservation Program (IDCP). The agreement became effective on February 15, 1999, and provides greater protection to dolphin stocks and enhanced conservation of yellowfin tuna and other living marine resources in the ETP. The IDCP and resolutions adopted by the Parties to the AIDCP are implemented domestically under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*).

This proposed rule would revise regulations at 50 CFR parts 216 and 300 to facilitate management of U.S. vessels authorized to fish for tuna and tuna-like species in the Convention Area and to ensure consistency between operation of these vessels and resolutions adopted by the IATTC and the IDCP. First, collection of a vessel photograph and vessel information would be required for commercial fishing vessels and commercial passenger fishing vessels (CPFVs) authorized to fish for tuna and tuna-like species in the Convention Area. Second, regulations for tuna purse seine vessels would be revised to require: (1) Annual written notification to list a small vessel as active or inactive; (2) written notification of the intent to transfer a vessel to foreign registry and flag; (3) payment of an ETP operator permit application fee; and (4) for vessels authorized to set on dolphins, vessel inspections twice per year and the use of high-intensity floodlights. Additional criteria would be

added: (1) to consider a request for active status as frivolous if a purse seine vessel was listed as active but did not fish for tuna at all in the Convention Area; and (2) to remove vessels from the Vessel Register if the owner lacks valid vessel documentation, or, for tuna purse seine vessels, if the owner has made a frivolous request or has notified NMFS of the intent to transfer the vessel to foreign registry and flag. This rule would require importers to submit certifications within 10 days of importing a shipment into the United States, rather than 30 days. Finally, this rule would require electronic submissions of certifications by importers to be in Portable Document Format (PDF). In addition, this rule would make numerous non-substantive modifications and clarifications to the regulations.

Definitions

The definition for "Tuna product" would be revised in 50 CFR 216.3 to clarify that tuna products include only products intended for human consumption. A definition for "Tuna" would be added to specify that the term refers to fish of the genus *Thunnus* (i.e., albacore tuna, bigeye tuna, bluefin tuna, longtail tuna, southern bluefin tuna, and yellowfin tuna) and the species *Euthynnus (Katsuwonus) pelamis* (i.e., skipjack tuna). Definitions for "Albacore tuna," "Bigeye tuna," "Bluefin tuna," "Longtail tuna," "Skipjack tuna," "Southern bluefin tuna," and "Yellowfin tuna" would also be added to 50 CFR 216.3 to identify the genus and species referred to by these common names.

In 50 CFR 300.21, the definition for "Vessel Register" would be removed and replaced with a definition for "Regional Vessel Register" to include all commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area, consistent with the definition used by the IATTC. A definition for "Commercial passenger fishing vessel" would be added to clarify that CPFVs are vessels licensed for commercial passenger fishing purposes from which passengers are permitted to conduct sportfishing activities. A definition for "Tuna" would also be added to specify that the term refers to fish of the genus *Thunnus* and the species *Euthynnus (Katsuwonus) pelamis* (i.e., skipjack tuna).

Vessel Register

In June 2000, the IATTC adopted a "Resolution on a Regional Vessel Register" (C-00-06) to establish a register of all vessels authorized to fish

for tuna and tuna-like species in the Convention Area. To maintain the Regional Vessel Register (Vessel Register), the IATTC requires each member nation to submit specific information for all vessels authorized to fish for tuna and tuna-like species in the Convention Area. The information required for the IATTC Vessel Register includes: The vessel name and registration number; a photograph of the vessel with the registration number legible; previous vessel name(s) and flag; port of registry; the name and address of the owner(s) and managing owner(s); International Radio Call Sign; where and when built; length, beam, and moulded depth; gross tonnage, fish hold capacity in cubic meters, and carrying capacity in metric tons; engine horsepower; and type of fishing method(s).

Under current regulations at 50 CFR 300.22(b), submission of vessel information to NMFS is mandatory for large tuna purse seine vessels but voluntary for all other vessels. NMFS proposes to revise 50 CFR 300.22(b) to require the collection of vessel photographs and vessel information for all U.S. commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area, so that all of these vessels would be included on the Vessel Register. Currently, about 2,100 U.S. commercial fishing vessels and CPFVs are authorized under several different permit systems to fish for tuna and tuna-like species in the Convention Area, including: (1) ETP tuna purse seine vessel permits (50 CFR 216.24); (2) Pacific Highly Migratory Species (HMS) vessel permits (50 CFR part 660); and (3) for vessels based in Hawaii and the U.S. Pacific Islands, High Seas Fishing Compliance Act (HSFCA) permits (50 CFR part 300). Owners of large tuna purse seine vessels must obtain both an ETP tuna purse seine vessel permit and an HSFCA permit in order to have a vessel be categorized as active on the Vessel Register. Together, the applications for the ETP tuna purse seine vessel permit and HSFCA permit cover all of the required Vessel Register information except for the vessel photograph. This proposed rule would revise the ETP tuna purse seine vessel permit application to require submission of a vessel photograph with the registration number legible. This revision is subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The Pacific HMS permit application covers all of the required Vessel Register

information except for the vessel photograph, and the HSFCA permit application covers all of the required information except for the vessel photograph, carrying capacity, and type of fishing method(s). Revisions to the Pacific HMS permit application and the HSFCA permit application to collect the required additional information are planned as actions separate from this proposed rule.

50 CFR 300.22(a) requires the master or person in charge of a commercial fishing vessel or CPFV listed on the Vessel Register to keep an accurate log of operations of the vessel. This rule would update this provision to reflect differences in these reporting requirements for tuna purse seine vessels greater than 400 st (362.8 mt) carrying capacity compared to reporting requirements for tuna purse seine vessels of 400 st (362.8 mt) carrying capacity or less and for non-purse seine vessels. The rule would revise 50 CFR 300.22(a) to clarify that for tuna purse seine vessels greater than 400 st (362.8 mt) carrying capacity, the master or person in charge of the vessel must maintain and submit to the IATTC the record and bridge log issued by the IATTC, or a general logbook that includes for each day the date, noon position, and the tonnage of fish on board by species. For tuna purse seine vessels of 400 st (362.8 mt) carrying capacity or less and for non-purse seine vessels on the Vessel Register, maintaining and submitting reporting forms (logbooks) under existing state or Federal regulations (e.g., longline logbooks for Pacific pelagic longline vessels, described in 50 CFR 660.14(a)) would be sufficient to comply with this requirement.

On June 28, 2002, the IATTC adopted a "Resolution on the capacity of the tuna fleet operating in the ETP (revised)" (Resolution C-02-03) to limit the total capacity of the ETP tuna purse seine fleet and to establish a subset list of active and inactive tuna purse seine vessels as part of the Vessel Register. The U.S. tuna purse seine fleet operating in the ETP is limited to 8,969 metric tons (mt) carrying capacity, thus limiting the number of vessels allowed to actively participate in the fishery each year. On April 12, 2005, NMFS issued a final rule (69 FR 19004) establishing procedures at 50 CFR 300.22(b) for U.S. tuna purse seine vessels to be listed on the Vessel Register and be categorized as active or inactive, and establishing criteria for the removal of vessels from the Vessel Register. The active and inactive list is valid through December 31 of each year. The paragraphs below describe

proposed revisions to the procedures at 50 CFR 300.22(b) for tuna purse seine vessels to be listed on the Vessel Register and to requirements for tuna purse seine vessels listed on the Vessel Register, including one requirement that is also applicable to non-purse seine commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the ETP.

Under 50 CFR 300.22(b), tuna purse seine vessels of 400 short tons (st) (362.8 mt) carrying capacity or less must be categorized as active on the Vessel Register if landings of tuna caught in the Convention Area comprise more than 50 percent of the vessel's total landings, by weight, for a given calendar year. To request active or inactive status for a vessel, the vessel owner must submit payment of the vessel assessment fee (also called the observer placement fee) associated with active or inactive status. Beginning in 2006, the Parties to the AIDCP have required payment of the vessel assessment fee only if a vessel: (1) Is listed as active and is required by the AIDCP to carry an observer; or (2) is listed as inactive and exceeds 400 st (362.8 mt) carrying capacity (Resolution A-06-01, Vessel Assessments and Financing). Tuna purse seine vessels of 400 st (362.8 mt) carrying capacity or less are required to carry an observer only if the vessel is suspected of intentionally setting on dolphins (AIDCP, Resolution on vessels of less than 363 mt capacity, October 10, 2002). None of the U.S. tuna purse seine vessels of 400 st (362.8 mt) carrying capacity or less are required to carry an observer and therefore have not been required to pay the vessel assessment fee since 2006. Under the current regulations, payment of the fee is the only mechanism for vessel owners to request active or inactive status for vessels of that size. To address this issue, the proposed rule would revise 50 CFR 300.22(b) to require owners of purse seine vessels of 400 st (362.8 mt) carrying capacity or less to submit annual written notification to request a vessel be categorized as active or inactive on the Vessel Register. To request active status, vessel owners or managing owners would be required to submit written notification by fax to the Administrator, Southwest Region, including, but not limited to, all of the required Vessel Register information as described above and the vessel owner or managing owner's signature and business telephone and fax numbers. A faxed copy would provide a date and time stamp to prioritize applications on a first-come, first-served basis. Prioritization is necessary when the

total capacity of vessels applying for active status exceeds the U.S. tuna purse seine fleet's capacity (8,969 mt). To request inactive status, vessel owners or managing owners would be required to submit written notification by mail to the Administrator, Southwest Region, including, but not limited to, the vessel name, registration number, and vessel owner or managing owner's name, signature, business address, and business telephone and fax numbers. 50 CFR 300.22(b) would also be revised to require payment of the vessel assessment fee for tuna purse seine vessels of 400 st (362.8 mt) carrying capacity or less only if the vessel is categorized as active on the Vessel Register and is required to carry an observer.

50 CFR 300.22(b)(4)(ii) states that a request for active status on the Vessel Register is considered to be frivolous if a tuna purse seine vessel is categorized as active for a given calendar year, but 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. The current regulation does not address cases in which a vessel did not fish for tuna in the Convention Area at all (i.e., zero landings). This rule would add to 50 CFR 300.22(b)(4)(ii) to allow a request for active status to be considered frivolous if a purse seine vessel was categorized as active but did not fish for tuna in the Convention Area at all in that same year, to ensure all cases constituting a frivolous request are covered.

50 CFR 300.22(b)(5) would be revised to add to criteria under which the Administrator, Southwest Region, may remove vessels from the Vessel Register. First, criteria would be added to allow removal of a vessel if the vessel's state registration or documentation with the U.S. Coast Guard (USCG) is not valid. Vessels must have valid state registration or USCG documentation in order to fish in navigable waters of the U.S. or in the U.S. exclusive economic zone. Vessels without valid state registration or vessel documentation are no longer authorized by the United States to fish for tuna or tuna-like species in the Convention Area and must be removed from the Vessel Register. Second, criteria would be added to allow removal of a tuna purse seine vessel from the Vessel Register if the owner's request for active status has been determined to be frivolous. Removal of these vessels may be necessary to make room for other U.S. purse seine vessels desiring to actively fish for tuna in the Convention Area. Finally, criteria would be added to

allow removal of a tuna purse seine vessel from the Vessel Register if the owner or managing owner submits written notification of the intent to transfer the vessel to foreign registry and flag. Removal of a tuna purse seine vessel from the Vessel Register prior to transfer is necessary to protect the U.S. tuna purse seine fleet's capacity limit. Each U.S. vessel on the active tuna purse seine list holds a certain portion (equal to the vessel's carrying capacity) of the U.S. fleet's capacity. If a vessel listed as active is transferred, the capacity held by that vessel could be transferred with it to the foreign nation, resulting in a loss of operating capacity for the U.S. and an increase in operating capacity for the foreign nation. Removal of the vessel from the Vessel Register prior to transfer would prevent this transfer of capacity. Under current regulations, NMFS may remove a tuna purse seine vessel from the Vessel Register prior to transfer, but only if the USCG or the U.S. Maritime Administration (MARAD) notifies NMFS that the vessel owner has submitted an application for transfer. Under an existing Memorandum of Understanding (MOU), MARAD already provides notification to NMFS for all large purse seine vessels requiring MARAD approval prior to transfer. However, NMFS does not have a similar agreement with the USCG regarding notification at this time. To ensure NMFS is notified prior to transfers, this rule would add new paragraph 50 CFR 300.22(b)(8) requiring owners of tuna purse seine vessels listed on the Vessel Register to submit written notification to the Administrator, Southwest Region, prior to submitting an application to transfer a vessel to foreign registry and flag. Written notification would include the vessel name and registration number; the estimated submission date of the application to transfer the vessel to foreign registry and flag; and the vessel owner or managing owner's name and signature. Receipt of the written notification would be required at least 10 business days prior to submitting the application for transfer, to ensure NMFS has sufficient time to remove the vessel from the Vessel Register prior to the transfer. This rule would also add a prohibition at 50 CFR 300.24(j) making it illegal for vessel owners to fail to provide this written notification to the Administrator, Southwest Region, at least 10 business days prior to submitting the application for transfer. The written notification requirement would not apply to owners of vessels that must obtain approval by MARAD prior to transfer because MARAD

already provides notification to NMFS. In accordance with available vessel capacity, vessels removed from the Vessel Register could be placed on the Vessel Register again by the United States or any government with jurisdiction over the vessel that also participates in the IATTC.

50 CFR 300.25(a) states that the Administrator, Southwest Region, will directly notify owners and agents of U.S. tuna vessels about fishery management recommendations made by the IATTC and approved by the Department of State, and that approved IATTC recommendations will be announced in the **Federal Register**. This proposed rule would revise 50 CFR 300.25(a) to remove the requirement of direct notification. Instead, NMFS would notify the public of IATTC recommendations and resolutions through appropriate rulemaking in the **Federal Register**. Publications in the **Federal Register** would summarize the new fishery management recommendations and resolutions and respond to public comments received.

ETP Tuna Purse Seine Vessel and Operator Permit Applications and Fees

50 CFR 216.24(b)(4)(i) to (b)(4)(v) and 50 CFR 216.24(b)(5)(i) to (b)(5)(v) list all of the information collected on the ETP vessel and operator permit applications. This proposed rule would remove these paragraphs and add a general statement that an ETP vessel or operator permit application obtained from NMFS must be completed and submitted to request an ETP vessel or operator permit. Changes to information collected from the public in permit applications would still require appropriate rulemaking in the **Federal Register** and approval by the OMB under the PRA. 50 CFR 216.24(b)(6)(ii) would also be revised to allow NMFS to collect an operator permit application fee to cover the administrative costs associated with processing and issuing operator permits.

Under 50 CFR 216.24(b)(6)(iii), payment of the vessel assessment fee is required for tuna purse seine vessels: (1) Listed as active on the Vessel Register and that are required to carry an observer; (2) listed as inactive on the Vessel Register and that exceed 400 st (362.8 mt) carrying capacity; (3) licensed under the South Pacific Tuna Treaty (SPTT) that exercise their option to make a single trip into the ETP per calendar year; (4) not listed on the Vessel Register at the beginning of the calendar year and for which active status is requested to replace a vessel removed from active status during the year; and (5) listed as inactive at the beginning of the calendar year and for

which active status is requested to replace a vessel removed from active status during the year. The regulations establish deadlines for payment of the fee, except in the case of SPTT vessels and replacement vessels not listed at the beginning of the calendar year or in the previous year. 50 CFR 216.24(b)(6)(iii)(F) states that all payments made after the specified dates are subject to a 10-percent surcharge; however, only those payments subject to and made after the deadline are subject to a 10-percent surcharge. 50 CFR 216.24(b)(6)(iii)(F) would be revised to state that the following classes of vessels for which payments were made after the specified dates would not be subject to a 10-percent surcharge: (1) vessels licensed under the SPTT making a single trip into the ETP; and (2) vessels not listed at the beginning of the calendar year or in the previous year, and for which active status was requested to replace a vessel removed from active status during the year. A 10-percent surcharge would apply to the following classes of vessels for which payments were made late: (1) vessels listed as active or inactive at the beginning of the calendar year; and (2) vessels not listed at the beginning of the calendar year, but listed in the previous year, and for which active status was requested to replace a vessel removed from active status during the year.

Tuna Purse Seine Vessels With Dolphin Mortality Limits

Dolphin Mortality Limits (DMLs) are defined as “the maximum allowable number of incidental dolphin mortalities per calendar year assigned to a vessel” (50 CFR 216.3). Tuna purse seine vessels with DMLs are subject to additional requirements, including gear specifications and annual inspections. In 2004, the IDCP adopted resolutions to amend gear and inspection requirements for vessels with DMLs. To implement these requirements, this proposed rule would revise the regulations to comply with the resolutions adopted by the IDCP in 2004. Floodlight specifications at 50 CFR 216.24(c)(3)(viii) would be revised to require vessels with DMLs to be equipped with long-range, high-intensity floodlights with a sodium or multivapour lamp, to provide sufficient light to observe dolphin release procedures and to monitor incidental dolphin mortality. 50 CFR 216.24(c)(4)(i) would also be revised to increase the frequency of vessel inspections from once to twice per year, to monitor compliance with gear and equipment requirements associated with DMLs. Vessel inspections would be

conducted by IATTC representatives or NMFS staff.

Fisheries Certificates of Origin and Associated Certifications

To import tuna, tuna products, and certain other fish products into the United States, Fisheries Certificates of Origin (FCOs) and associated certifications must be filed with both U.S. Customs and Border Protection (CBP; Department of Homeland Security) and NMFS Southwest Region. Current regulations at 50 CFR 216.24(f)(3)(ii) require FCOs and associated certifications to be submitted to NMFS within 30 days of the shipment’s entry into the commerce of the United States. However, allowing 30 days to submit the required certifications may hinder enforcement, because the products will likely be offered for sale or purchased or consumed before violations of the regulations governing certification are determined. This rule would revise 50 CFR 216.24(f)(3)(ii) to require that FCOs and associated certifications be submitted to NMFS within 10 calendar days of the shipment’s entry into the commerce of the United States, to aid in enforcement of the regulations. Section 50 CFR 216.24(f)(3) continues to require that FCOs covering tuna processed in the United States be submitted only after endorsement by the final processor or exporter.

FCOs and associated certifications may be submitted to NMFS using a secure file transfer protocol (FTP) site or via mail either on compact disc or as hard copies. The current regulations allow electronic submissions to be in PDF or as an image file embedded in a Microsoft Word, Microsoft PowerPoint, or Corel WordPerfect file. However, because NMFS may not be able to view image files embedded in certain versions of Word, PowerPoint, or WordPerfect, and because PDF is universal and readily available, 50 CFR 216.24(f)(3) would be revised to require all electronic submissions to NMFS of FCOs and associated certifications to be in PDF.

In 50 CFR 216.24(f)(2), the list of Harmonized Tariff Schedule of the United States (HTS) numbers and descriptions of products would be updated based on the most recent HTS.

50 CFR 216.24(f)(4)(xiii) and 50 CFR 216.24(f)(6)(ii) both describe the circumstances under which the High Seas Driftnet Certification contained on the FCO must be completed and by whom. 50 CFR 216.24(f)(4)(xiii) requires a responsible government official of the harvesting nation to sign and date the High Seas Driftnet Certification for any

shipments containing fish or fish products “harvested by” vessels of a nation known to use large-scale driftnets (a “large-scale driftnet nation”), to certify the fish or fish products were not harvested using large-scale driftnets. In contrast, 50 CFR 216.24(f)(6)(ii) requires a responsible government official of the large-scale driftnet nation to sign and date the High Seas Driftnet Certification for any shipments containing fish or fish products “exported from or harvested on the high seas by” the large-scale driftnet nation. To address these differences, 50 CFR 216.24(f)(4)(xiii) would be revised to be consistent with the language in 50 CFR 216.24(f)(6)(ii). In addition, the instructions on the FCO require a responsible government official of the harvesting nation to sign and date the High Seas Driftnet Certification for any shipments containing fish or fish products “exported from or harvested by” a large-scale driftnet nation. In an action outside of this rulemaking under the PRA, the FCO instructions would be revised to require a responsible government official of the large-scale driftnet nation to sign and date the High Seas Driftnet Certification consistent with 50 CFR 216.24(f)(6)(ii).

Dolphin-Safe Certifications and Tuna Tracking Forms

50 CFR 216.24(f)(3) states that documents (e.g., FCOs, certifications, written statements, etc.) covering tuna or tuna products to be imported into the United States or labeled as “dolphin-safe” are to be filed with CBP at the time of import and then “accompany” the tuna or tuna products by being submitted to the Tuna Tracking and Verification Program, Southwest Region. This proposed rule would add a reference to 50 CFR 216.24(f)(3) wherever the term “accompany” is used in 50 CFR sections 216.91, 216.92, and 216.93, to clarify what is meant by the term “accompany.” In addition, as is currently required, the documents must be endorsed at each change in ownership, submitted by the last endorser to the Administrator, Southwest Region, retained in records by importers and exporters for 2 years, and made available within 30 days of a request by the Secretary of Commerce or the Administrator, Southwest Region.

Tuna tracking forms (TTFs) are completed by observers on ETP tuna purse seine vessels greater than 400 st (362.8 mt) carrying capacity, to record every set made during a trip. The handling of TTFs and the tracking and verification of dolphin-safe and non-dolphin-safe tuna caught in the Convention Area are regulated by the

international tuna tracking and verification program adopted by the Parties to the AIDCP. This proposed rule would revise 50 CFR 216.93(c)(5), which describes certain parts of the IDCP tuna tracking and verification program, by removing paragraphs (c)(5)(i) through (c)(5)(v) and adding a general statement that the handling of TTFs and the tracking and verification of tuna caught by a U.S. tuna purse seine vessel in the Convention Area will be conducted consistent with the international tuna tracking and verification program adopted by the Parties to the AIDCP. This revision would help avoid confusion and clarify that the procedures for handling TTFs and for tracking and verifying tuna caught in the Convention Area are not regulated by NMFS.

Public Comments Solicited

NMFS is soliciting public comments on this proposed rule. Written comments may be submitted to Susan Wang (see **ADDRESSES** and **DATES**).

Classification

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. NMFS prepared a Regulatory Impact Review on the proposed regulations, available at: <http://www.regulations.gov>.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is presented in the following paragraphs.

Description of Affected Entities and Small Entities

The proposed regulations would apply to four classes of entities: (1) Owners of U.S. tuna purse seine vessels fishing in the Convention Area; (2) owners of U.S. commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area; (3) vessel operators applying for ETP tuna purse seine operator permits; and (4) importers of tuna, tuna products, and certain other fish products. We used the SBA's size standards established at 13 CFR 121.201 to define small entities. Fishing vessels with less than \$4 million in average annual receipts, vessel operators with an average annual income of less than \$4 million, and importers with less than

100 employees would be considered small entities.

U.S. tuna purse seine vessels fishing in the Convention Area are divided into two size groups: (1) Vessels greater than 400 st (362.8 mt) carrying capacity ("large" vessels); and (2) vessels of 400 st (362.8 mt) carrying capacity or less ("small" vessels). Large vessels typically exceed \$4 million in annual receipts, whereas small vessels have less than \$4 million in annual receipts and would be considered small entities. Large vessels must be categorized as active on the Vessel Register in order to fish for tuna in the Convention Area. Small vessels are not required to be listed on the Vessel Register unless landings of tuna caught in the Convention Area comprise more than 50 percent of the vessel's total landings, by weight, for a given calendar year. From 2004 to 2006, the active U.S. tuna purse seine fleet operating in the ETP averaged less than 5 large vessels and from 1–2 small vessels per year. In 2007, the active U.S. fleet consisted of three large vessels and one small vessel, and the inactive list consisted of one small vessel. Ten or fewer small purse seine vessels fish most of the year for coastal pelagic species, but opportunistically fish for tuna in the ETP when tuna are seasonably available.

About 2,100 U.S. commercial fishing vessels and CPFVs are authorized to fish for tuna and tuna-like species in the Convention Area per year, including: (1) vessels under Pacific HMS vessel permits (about 1,988 vessels); and (2) vessels based in Hawaii and the U.S. Pacific Islands, under HSFCAs permits (about 164 vessels). All of these vessels would be considered small entities with less than \$4 million in annual receipts.

Vessel operators are in charge of and control fishing operations on U.S. purse seine vessels fishing for tuna and tuna-like species in the Convention Area and must possess a valid ETP operator permit. About 25 vessel operators apply for the ETP operator permit each year and all would be considered small entities with an annual income of less than \$4 million.

There are an estimated 475 distinct U.S. importers of tuna, tuna products, and certain other fish products per year. Of these, about 350 importers would be considered small businesses with less than 100 employees.

Impacts on Owners of Small Tuna Purse Seine Vessels, Commercial Fishing Vessels, and CPFVs

The proposed rule would apply additional requirements to tuna purse seine vessels in the ETP, none of which would result in a significant economic

effect. First, payment of the vessel assessment fee is the only mechanism under the current regulations for vessel owners to request active or inactive status for a small tuna purse seine vessel. This rule would: (1) update the regulations to be consistent with resolutions under the AIDCP and require owners of small tuna purse seine vessels to pay the vessel assessment fee only if active status is requested for the vessel and the vessel is required to carry an observer; and (2) require an annual written notification to request active or inactive status for a small tuna purse seine vessel. Submission of written notification would: (1) ensure collection of the required information for the Vessel Register; and (2) provide a method to request active or inactive status, particularly for vessel owners no longer required to pay the vessel assessment fee. Written notification to request active status would require submission by fax to NMFS of the vessel owner or managing owner's signature and business telephone and fax numbers, as well as the required Vessel Register information as described in the preamble. Written notification to request inactive status would require submission by mail to NMFS of the vessel name and registration number and the owner or managing owner's name, signature, and business contact information. The time needed to gather and submit this information would be minimal (about 35 minutes for a request for active status and 5 minutes for a request for inactive status). Vessel owners already provide much of this information to NMFS on a voluntary basis. Additional costs for a request for active status would consist of \$0.30 for a photograph and \$3.00 for faxing. Additional costs for a request for inactive status would consist of \$0.10 for a copy of the written notification, \$0.10 for an envelope, and \$0.42 for postage.

Vessel Register information would also be collected for vessels authorized to fish for tuna and tuna-like species in the Convention Area under an ETP tuna purse seine vessel permit, a Pacific HMS vessel permit, or an HSFCAs permit. This proposed rule would revise the ETP vessel permit application to collect a vessel photograph. However, owners of small purse seine vessels would not be affected, because they are not required to obtain an ETP vessel permit. Revisions to the Pacific HMS vessel permit application and HSFCAs permit application to collect the required additional information would affect vessels under these permits. However, these revisions are planned as actions

separate from this proposed rule and are not considered in this analysis.

Current regulations state that a request for active status will be considered frivolous if a purse seine vessel was listed as active but less than 20 percent of the vessel's total landings, by weight, in that same year was comprised of tuna harvested by purse seine in the Convention Area. This proposed rule would add additional criteria to allow a request for active status to be considered frivolous if a purse seine vessel was listed as active but did not fish for tuna at all in the Convention Area in that same year. The additional criteria would reinforce the current regulations and would not result in additional costs.

The proposed rule would require owners of tuna purse seine vessels listed on the Vessel Register to submit written notification to NMFS at least 10 business days prior to submitting an application to transfer the vessel to foreign registry and flag. Written notification would include the vessel name and registration number, the vessel owner or managing owner's name and signature, and the expected date of submission of the application. Vessels requiring approval by MARAD prior to transfer would not be subject to the written notification requirement, because MARAD already provides such notification to NMFS under an MOU. No such agreement exists with the USCG at this time. This written notification would ensure NMFS is notified prior to transfer of the vessel to foreign registry and flag. The time needed to prepare and submit this written notification would be minimal (about 5 minutes). Additional costs would include \$0.10 for a copy of the written notification, \$0.10 for an envelope, and \$0.42 for postage.

Regulations at 50 CFR part 300 provide criteria under which a vessel may be removed from the Vessel Register. The proposed regulations would add additional criteria to aid in managing and updating the U.S. portion of the Vessel Register. First, additional criteria would be added to allow removal of a vessel from the Vessel Register if the vessel lacks valid state registration or documentation with the USCG. Vessels lacking valid state registration or USCG documentation are not authorized to fish in navigable waters of the United States or in the U.S. exclusive economic zone, and therefore are not authorized by the United States to fish for tuna and tunalike species in the Convention Area. Removal of such vessels is necessary to update and maintain the Vessel Register and would not result in additional costs.

Second, additional criteria would be added to allow removal of a tuna purse seine vessel from the Vessel Register if the owner of the vessel has made a frivolous request for active status. Removal of the vessel may be necessary to make room on the Vessel Register for other U.S. purse seine vessels. Small vessels would experience little to no economic impacts. Although the vessel would no longer be listed on the Vessel Register, current regulations allow a small vessel to continue fishing for tuna as long as landings of tuna caught in the Convention Area comprise 50 percent or less of the vessel's total landings in that calendar year. All small vessels removed from the Vessel Register due to a frivolous request would still be allowed to fish for tuna in the Convention Area, given the definition of a frivolous request. Vessels removed from the Vessel Register due to a frivolous request may be added back to the Vessel Register if the owner submits a request for active or inactive status; however, the request would be considered last among all requests for that year.

Third, additional criteria would be added to allow removal of a tuna purse seine vessel from the Vessel Register upon receipt of written notification from the owner or managing owner of the intent to transfer the vessel to foreign registry and flag. The additional criteria would reinforce current regulations, which allow NMFS to remove a vessel from the Vessel Register prior to transfer, but only if MARAD or the USCG notifies NMFS that the owner has submitted an application for transfer. Removal of a tuna purse seine vessel from the Vessel Register prior to transfer is necessary to protect the U.S. tuna purse seine fleet's capacity limit. A U.S. tuna purse seine vessel listed as active on the Vessel Register holds a certain portion of the U.S. fleet's capacity limit of 8,969 mt. The capacity held by the vessel could be transferred with the vessel upon transfer to foreign registry and flag. Removing the vessel from the Vessel Register prior to transfer would prevent reductions in the U.S. fleet's capacity limit, because the vessel would no longer hold a portion of the U.S. fleet's capacity. However, the vessel's market value would likely decrease. Although this may result in a potentially significant economic impact, this impact would be attributed to the current regulations that already allow removal of vessels from the Vessel Register prior to transfer.

Owners of small purse seine vessels would not be subject to revised floodlight and vessel inspection requirements for purse seine vessels

possessing DMLs. Owners of small purse seine vessels are not allowed to obtain DMLs.

Impacts on Vessel Operators

The proposed rule would add an ETP operator permit application fee of \$35 to \$40 to cover administrative costs for processing and issuing ETP operator permits. An application processing fee of \$35 to \$40 would not be a significant proportion of the annual income of an ETP vessel operator, who earns approximately \$40,000 to more than \$100,000 per fishing trip.

Impacts on Importers

The requirement that electronic submissions of FCOs and associated certifications be in PDF would affect importers of tuna, tuna products, and certain other fish products requiring FCOs. Limiting the acceptable file format types to PDF would ensure that files are readable. This action would not significantly affect the ability of importers to submit FCOs and associated certifications. Importers would continue to have the option of submitting FCOs and associated certifications by mail. Submission by mail is the method currently used by almost all of the 475 importers and this would not be expected to change. Since the start of this program, only two out of the 475 importers per year have used the electronic option to submit their forms to NMFS, and both already submit the forms in PDF. No additional costs would be expected to result from this requirement.

Importers would also be affected by the requirement that FCOs and associated certifications be submitted to NMFS within 10 calendar days of the shipment's entry into the commerce of the United States, rather than within 30 days (except when the tuna will be processed in the United States, in which case the form must be submitted after endorsement by the final processor or exporter). Reducing the time period within which the forms must be submitted to NMFS would aid in enforcement. NMFS would be able to detect and respond to problems with the FCOs or certifications before the products are placed in stores for sale, or purchased and consumed. Most importers would have no additional costs, because they already submit their forms within 10 days of the shipment's entry into U.S. commerce. About 20 of the 350 importers that would be considered small businesses currently submit their forms monthly and would need to submit the FCOs and associated certifications more frequently (e.g., 2–3 times per month rather than monthly).

Aside from the extra time required, added out-of-pocket expenses would be small (i.e., \$0.10 for each additional envelope and \$0.42 for postage for each additional mailing).

Summary

The proposed rule would affect small entities, but would not have a significant economic effect on any of these small entities. In some cases, the new or revised requirements would apply to a substantial number of small entities, but would not result in significant economic effects. In addition, the proposed rule would not create a disproportionate effect on small entities or significantly reduce profit for small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act

This proposed rule contains new and revised collection-of-information requirements subject to review and approval by OMB under the PRA for collections under control number 0648-0387. The following collection-of-information requirements have been submitted to OMB for approval: (1) Collection of a vessel photograph as part of the ETP tuna purse seine vessel permit application; (2) annual written notification to request a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active on the Vessel Register, including the owner or managing owner's signature and business telephone and fax numbers and the required Vessel Register information (i.e., the vessel name, registration number, and previous name(s) and flag(s); a vessel photograph with the vessel registration number legible; the name and business address of the owner(s) and managing owner(s); port of registry; International Radio Call Sign; where and when built; length, beam, and moulded depth; gross tonnage, fish hold capacity, and carrying capacity; engine horsepower; and type of fishing method(s)); (3) annual written notification to request that a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as inactive on the Vessel Register, including the vessel name, registration number, and vessel owner or managing owner's name, signature, business address, and business telephone and fax numbers; and (4) written notification prior to submitting an application to transfer a purse seine vessel listed on the Vessel Register to foreign registry and flag, including the vessel name and registration number, the estimated submission date of the application, and the vessel owner or

managing owner's name and signature. Public reporting burdens per individual response for the new and revised collection-of-information requirements are estimated to average 35 minutes for the ETP tuna purse seine vessel permit application; 35 minutes for the written notification to request active status; 5 minutes for the written notification to request inactive status; and 5 minutes for the written notification of the intent to transfer a vessel to foreign registry and flag. These reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

This proposed rule also contains a non-substantive change subject to review and approval by OMB under the PRA for collections under control number 0648-0335. A non-substantive change request has been submitted to OMB for approval to require that the CBP importer of record submit a copy of the FCO and associated certifications to NMFS within 10 days of a shipment's entry into U.S. commerce, rather than within 30 days (except when the tuna will be processed in the United States, in which case the forms must be submitted to NMFS after endorsement by the final processor or exporter). The public reporting burden for the revised collection of information requirement would remain the same (estimated to average 20 minutes per individual response), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Susan Wang, NMFS, and to David Rostker, OMB (see **ADDRESSES** above).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB control number.

Endangered Species Act

NMFS prepared a Biological Opinion for an interim final rule (65 FR 30, January 3, 2000) to implement the IDCP in December 1999, and in July 2004 issued an amended Incidental Take Statement after taking into account the revisions made in the final rule (69 FR 55288, September 13, 2004). In the 1999 Biological Opinion, NMFS concluded that fishing activities conducted under the interim final rule are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This proposed rule would not result in any effects beyond those considered in the 1999 Biological Opinion and 2004 Incidental Take Statement.

National Environmental Policy Act

NMFS prepared an Environmental Assessment (EA) for a final rule (70 FR 19004, April 12, 2005) to implement resolutions adopted by the IATTC and the IDCP. The Assistant Administrator for Fisheries concluded that fishing activities conducted under the final rule would not be expected to result in significant effects on the human environment. This proposed rule would not be expected to result in modifications to fisheries operations or effects on the human environment beyond those considered under the alternatives in the EA. This action has been categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. A memo to the record has been prepared memorializing this decision that is available at the Federal E-rulemaking Web site: <http://www.regulations.gov>.

Marine Mammal Protection Act

Incidental take of dolphins and other marine mammals may occur during fishing operations by U.S. tuna purse seine vessels in the ETP. The take of dolphins incidental to the operation of the U.S. ETP tuna purse seine fishery is authorized and managed under the IDCP. This proposed rule would not affect the administration of that program, which is implemented under the MMPA.

List of Subjects

50 CFR Part 216

Fish, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 300

International fisheries regulations, Pacific tuna fisheries.

Dated: July 7, 2008.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 216 and 300 as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.3, add definitions for “Albacore tuna”, “Bigeye tuna”, “Bluefin tuna”, “Longtail tuna”, “Skipjack tuna”, “Southern bluefin tuna”, “Tuna”, and “Yellowfin tuna” in alphabetical order and revise the definition for “Tuna product” to read as follows:

§ 216.3 Definitions.

* * * * *

Albacore tuna means the species *Thunnus alalunga*.

* * * * *

Bigeye tuna means the species *Thunnus obesus*.

Bluefin tuna means the species *Thunnus thynnus*.

* * * * *

Longtail tuna means the species *Thunnus tonngol*.

* * * * *

Skipjack tuna means the species *Euthynnus (Katsuwonus) pelamis*.

* * * * *

Southern bluefin tuna means the species *Thunnus maccoyii*.

* * * * *

Tuna means any fish of the genus *Thunnus* and the species *Euthynnus (Katsuwonus) pelamis*.

Tuna product means any food product processed for retail sale and intended for human consumption that contains an item listed in § 216.24(f)(2)(i) or (ii), but does not include perishable items with a shelf life of less than 3 days.

* * * * *

Yellowfin tuna means the species *Thunnus albacares* (synonymy: *Neothunnus macropterus*).

3. In § 216.24, redesignate paragraph (f)(8)(i)(D)(3) as paragraph (f)(8)(ii) and redesignate paragraphs (f)(8)(iv), (f)(8)(v), and (f)(8)(vi) as paragraphs (f)(8)(iii), (f)(8)(iv), and (f)(8)(v); and

revise paragraphs (a)(3), (b)(4), (b)(5), (b)(6)(ii), (b)(6)(iii), (c)(3)(viii), (c)(4)(i), (f)(2), (f)(3), (f)(4), (f)(10), and (f)(11), to read as follows:.

§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

(a) * * *

(3) Upon written request made in advance of entering the ETP, the limitations in paragraphs (a)(2)(ii) and (e)(1) of this section may be waived by the Administrator, Southwest Region, for the purpose of allowing transit through the ETP. The waiver will provide, in writing, the terms and conditions under which the vessel must operate, including a requirement to report to the Administrator, Southwest Region, the vessel's date of exit from or subsequent entry into the permit area.

(b) * * *

(4) *Application for vessel permit.* ETP tuna purse seine vessel permit application forms and instructions for their completion are available from NMFS. To apply for an ETP vessel permit, a vessel owner or managing owner must complete, sign, and submit the appropriate form via fax to (562) 980-4047, for prioritization purposes as described under § 300.22(b)(4)(i)(D)(3) of this title, allowing at least 15 days for processing. To request that a vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active on the Vessel Register under § 300.22(b)(4)(i) of this title in the following calendar year, the owner or managing owner must submit the vessel permit application via fax, payment of the vessel permit application fee, and payment of the vessel assessment fee no later than September 15 for vessels for which a DML is requested for the following year, and no later than November 30 for vessels for which a DML is not requested for the following year.

(5) *Application for operator permit.* An applicant for an operator permit must complete, sign, and submit the appropriate form obtained from NMFS and submit payment of the permit application fee to the Administrator, Southwest Region, allowing at least 45 days for processing. Application forms and instructions for their completion are available from NMFS.

(6) * * *

(ii) *Operator permit fee.* The Assistant Administrator may require a fee to be submitted with an application for an operator permit. The level of such a fee shall be determined in accordance with the NOAA Finance Handbook and specified by the Administrator,

Southwest Region, on the application form.

(iii) *Vessel assessment fee.* The vessel assessment fee supports the placement of observers on individual tuna purse seine vessels, and maintenance of the observer program, as established by the IATTC or other approved observer program.

(A) The owner or managing owner of a purse seine vessel for which a DML has been requested must submit the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than September 15 of the year prior to the calendar year for which the DML is requested. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(B) The owner or managing owner of a purse seine vessel for which active or inactive status on the Vessel Register, as defined in § 300.21 of this title, has been requested, but for which a DML has not been requested, must submit payment of the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than November 30 of the year prior to the calendar year in which the vessel will be listed on the Vessel Register. Payment of the vessel assessment fee is required only if the vessel is listed as active and is required to carry an observer, or if the vessel is listed as inactive and exceeds 400 st (362.8 mt) in carrying capacity. Payment of the vessel assessment fee must be consistent with the vessel's status, either active or inactive, on the Vessel Register in § 300.22(b)(4) of this title.

(C) The owner or managing owner of a purse seine vessel that is licensed under the South Pacific Tuna Treaty must submit the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, prior to obtaining an observer and entering the ETP to fish. Consistent with § 300.22(b)(1)(i) of this title, this class of purse seine vessels is not required to be listed on the Vessel Register under § 300.22(b)(4) of this title in order to purse seine for tuna in the ETP during a single fishing trip per calendar year of 90 days or less. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(D) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of

the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the vessel assessment fee associated with active status, less the vessel assessment fee associated with inactive status that was already paid, before NMFS will request the IATTC Secretariat change the status of the vessel from inactive to active. Payment of the vessel assessment fee is required only if the vessel is required to carry an observer.

(E) The owner or managing owner of a purse seine vessel not listed on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the vessel assessment fee associated with active status only if the vessel is required to carry an observer, before NMFS will request the IATTC Secretariat change the status of the vessel to active.

(F) Payments will be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(D) of this section; under paragraph (b)(6)(iii)(E) of this section for vessels that were listed on the Vessel Register in the calendar year prior to the year for which active status was requested; or after the dates specified in paragraphs (b)(6)(iii)(A) or (b)(6)(iii)(B) of this section. Payments will not be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(C) of this section, or if received under paragraph (b)(6)(iii)(E) of this section for vessels that were not listed on the Vessel Register in the calendar year prior to the year for which active status was requested. The Administrator, Southwest Region, will forward all vessel assessment fees described in this section to the IATTC or to the applicable organization approved by the Administrator, Southwest Region.

* * * * *

(c) * * *

(3) * * *

(viii) *Lights*. The vessel must be equipped with long-range, high-intensity floodlights with a sodium lamp of at least 1000 watts, or a multivapour lamp of at least 1500 watts, for use in darkness to ensure sufficient light to observe that procedures for dolphin release are carried out and to monitor incidental dolphin mortality.

(4) *Vessel inspection*—(i) *Twice per year*. At least twice during each calendar year, purse seine nets and other gear and equipment required under § 216.24(c)(3) must be made

available for inspection and for a trial set/net alignment by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region, in order to obtain a vessel permit. The first such inspection shall be carried out before the vessel's request for a DML is submitted to the IATTC. The second such inspection shall be carried out before notification of any reallocation of DMLs for vessels with full-year DMLs or during the last quarter of the year for vessels with second-semester DMLs.

* * * * *

(f) * * *

(2) *Imports requiring a Fisheries Certificate of Origin*. Shipments of tuna, tuna products, and certain other fish products identified in paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) of this section may not be imported into the United States unless a properly completed Fisheries Certificate of Origin (FCO), NOAA Form 370, is filed with U.S. Customs and Border Protection (CBP) at the time of importation.

(i) *Imports requiring a Fisheries Certificate of Origin, subject to yellowfin tuna embargo*. All shipments containing yellowfin tuna or yellowfin tuna products (other than fresh tuna) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following Harmonized Tariff Schedule of the United States (HTS) numbers. Updated HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at <http://www.usitc.gov>. The scope of yellowfin tuna embargoes and procedures for attaining an affirmative finding are described under paragraphs (f)(6) and (f)(8) of this section, respectively.

(A) *Frozen*: (products containing Yellowfin).

0303.42.0020 Yellowfin tunas, whole, frozen

0303.42.0040 Yellowfin tunas, head-on, frozen, except whole

0303.42.0060 Yellowfin tunas frozen, except whole, head-on, fillets, livers and roes

0304.29.6097 Tuna fish fillets, frozen, Not elsewhere specified or indicated (NESOI)

0304.99.1090 Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NESOI

(B) *Airtight Containers*: (products containing Yellowfin).

1604.14.1010 Tunas and skipjack, in oil, in airtight containers, in foil or other flexible containers weighing

with their contents not more than 6.8 kg each

1604.14.1099 Tunas and skipjack, in oil, in airtight containers, NESOI

1604.14.2291 Other tunas and skipjack, no oil, in foil/flexible airtight containers, not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year

1604.14.2299 Tunas, NESOI and skipjack, not in oil, in other airtight containers not over 7 kg, 4.8% of U.S. consumption of canned tuna during preceding year

1604.14.3091 Tunas and skipjack, NESOI, not in oil, in foil or other flexible airtight containers, weighing with their contents not more than 6.8 kg each

1604.14.3099 Other tunas and skipjack, not in oil, in airtight containers, NESOI

(C) *Loins*: (products containing Yellowfin).

1604.14.4000 Tunas and skipjacks, prepared or preserved, not in airtight containers, not in oil, in bulk or immediate containers with their contents over 6.8 kg each

1604.14.5000 Tunas and skipjack, prepared or preserved, not in airtight containers, NESOI

(D) *Other*: (products containing Yellowfin).

1604.20.2500 Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each

1604.20.3000 Fish balls, cakes and puddings, NESOI

(ii) *Imports requiring a Fisheries Certificate of Origin, not subject to yellowfin tuna embargo*. All shipments containing tuna or tuna products (other than fresh tuna or yellowfin tuna identified in paragraph (f)(2)(i) of this section) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following HTS numbers. Updated HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at <http://www.usitc.gov>.

(A) *Frozen*: (other than Yellowfin).

0303.41.0000 Albacore or longfinned tunas, frozen, except fillets, livers and roes

0303.43.0000 Skipjack tunas or stripebelled bonito, frozen, except fillets, livers and roes

0303.44.0000 Bigeye tunas, frozen, except fillets, livers and roes

0303.45.0000 Bluefin tunas, frozen, except fillets, livers and roes

- 0303.46.0000 Southern bluefin tunas, frozen, except fillets, livers and roes
- 0303.49.0100 Tunas, frozen, except fillets, livers and roes, NESOI
- 0304.29.6097 Tuna fish fillets, frozen, NESOI
- 0304.99.1090 Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NESOI
- (B) *Airtight Containers*: (other than Yellowfin).
- 1604.14.1010 Tunas and skipjack, in oil, in airtight containers, in foil or other flexible containers weighing with their contents not more than 6.8 kg each
- 1604.14.1091 Tunas, albacore, in oil, in airtight containers, NESOI
- 1604.14.1099 Tunas and skipjack, in oil, in airtight containers, NESOI
- 1604.14.2251 Albacore tuna, not in oil, in foil/flexible airtight containers, weighing not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year
- 1604.14.2259 Albacore tuna, not in oil, in airtight containers weighing not over 7 kg, NESOI, 4.8% of U.S. consumption of canned tuna during preceding year
- 1604.14.2291 Other tunas and skipjack, no oil, in foil/flexible airtight containers, not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year
- 1604.14.2299 Tunas, NESOI and skipjack, not in oil, in other airtight containers, not over 7 kg, 4.8% of U.S. consumption of canned tuna during preceding year
- 1604.14.3051 Tuna, albacore not in oil, in foil or other flexible airtight containers, weighing with contents not more than 6.8 kg each, NESOI
- 1604.14.3059 Tuna, albacore not in oil, in airtight containers, NESOI
- 1604.14.3091 Tunas and skipjack, NESOI, not in oil, in foil or other flexible airtight containers, weighing with their contents not more than 6.8 kg each
- 1604.14.3099 Other tunas and skipjack, not in oil, in airtight containers, NESOI
- (C) *Loins*: (other than Yellowfin).
- 1604.14.4000 Tunas and skipjacks, prepared or preserved, not in airtight containers, not in oil, in bulk or immediate containers with their contents over 6.8 kg each
- 1604.14.5000 Tunas and skipjack, prepared or preserved, not in airtight containers, NESOI
- (D) *Other*: (only if the product contains tuna).
- 1604.20.2500 Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each
- 1604.20.3000 Fish balls, cakes and puddings, NESOI
- (iii) *Exports from driftnet nations only, requiring a Fisheries Certificate of Origin and official certification*. The following HTS numbers identify categories of fish and shellfish, in addition to those identified in paragraphs (f)(2)(i) and (f)(2)(ii) of this section, known to have been harvested using a large-scale driftnet and imported into the United States. Shipments exported from a large-scale driftnet nation, as identified under paragraph (f)(7) of this section, and imported into the United States, including but not limited to those imported into the United States under any of the HTS numbers listed in paragraph (f)(2) of this section, must be accompanied by an FCO and the official statement described in paragraph (f)(4)(xiii) of this section.
- (A) *Frozen*:
- 0303.19.0012 Chinook (King) salmon (*Oncorhynchus tshawytscha*), frozen, except fillets, livers and roes
- 0303.19.0022 Chum (dog) salmon (*Oncorhynchus keta*), frozen, except fillets, livers and roes
- 0303.19.0032 Pink (humpie) salmon (*Oncorhynchus gorbuscha*), frozen, except fillets, livers and roes
- 0303.19.0052 Coho (silver) salmon (*Oncorhynchus kisutch*), frozen, except fillets, livers and roes
- 0303.19.0062 Pacific salmon (*Oncorhynchus masou*, *Oncorhynchus rhodurus*), frozen, except fillets, livers and roes, NESOI
- 0303.21.0000 Trout (*Salmo trutta*; *Oncorhynchus mykiss*, *clarki*, *aguabonita*, *gilae*, *apache*, and *chrysogaster*), frozen, except fillets, livers and roes
- 0303.22.0000 Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), frozen, except fillets, livers and roes
- 0303.29.0000 Salmonidae, frozen, except fillets, livers and roes, NESOI
- 0303.61.0010 Swordfish steaks, frozen, except fillets
- 0303.61.0090 Swordfish, frozen, except steaks, fillets, livers and roes
- 0303.75.0010 Dogfish (*Squalus* spp.), frozen, except fillets, livers and roes
- 0303.75.0090 Sharks, frozen, except dogfish, fillets, livers and roes
- 0303.79.0079 Fish, frozen, except fillets, livers and roes, NESOI
- 0304.21.0000 Swordfish fillets, frozen, NESOI
- 0304.29.2066 Fish fillets, skinned, frozen blocks weighing over 4.5 kg each, to be minced, ground or cut into pieces of uniform weights and dimensions, NESOI
- 0304.29.6006 Atlantic Salmonidae (*Salmo salar*) fillets, frozen, NESOI
- 0304.29.6008 Salmonidae fillets, frozen, except Atlantic salmon, NESOI
- 0304.29.6099 Fish fillets, frozen, NESOI
- 0307.49.0010 Squid fillets, frozen
- (B) *Canned*:
- 1604.11.2020 Pink (humpie) salmon, whole or in pieces, but not minced, in oil, in airtight containers
- 1604.11.2030 Sockeye (red) salmon, whole or in pieces, but not minced, in oil, in airtight containers
- 1604.11.2090 Salmon NESOI, whole or in pieces, but not minced, in oil, in airtight containers
- 1604.11.4010 Chum (dog) salmon, not in oil, canned
- 1604.11.4020 Pink (humpie) salmon, not in oil, canned
- 1604.11.4030 Sockeye (red) salmon, not in oil, canned
- 1604.11.4040 Salmon, NESOI, not in oil, canned
- 1604.11.4050 Salmon, whole or in pieces, but not minced, NESOI
- 1604.19.2000 Fish, NESOI, not in oil, in airtight containers
- 1604.19.3000 Fish, NESOI, in oil, in airtight containers
- 1605.90.6050 Loligo squid, prepared or preserved
- 1605.90.6055 Squid except Loligo, prepared or preserved
- (C) *Other*:
- 0305.30.6080 Fish fillets, dried, salted or in brine, but not smoked, NESOI
- 0305.41.0000 Pacific salmon (*Oncorhynchus* spp.), Atlantic salmon (*Salmo salar*), and Danube salmon (*Hucho hucho*), including fillets, smoked
- 0305.49.4040 Fish including fillets, smoked, NESOI
- 0305.59.2000 Shark fins, dried, whether or not salted but not smoked
- 0305.59.4000 Fish, dried, whether or not salted but not smoked, NESOI
- 0305.69.4000 Salmon, salted but not dried or smoked; in brine
- 0305.69.5000 Fish in immediate containers weighing with their contents 6.8 kg or less each, salted but not dried or smoked; in brine, NESOI
- 0305.69.6000 Fish, salted but not dried or smoked; in brine, NESOI
- 0307.49.0022 Squid, *Loligo opalescens*, frozen (except fillets), dried, salted or in brine
- 0307.49.0024 Squid, *Loligo pealei*, frozen (except fillets), dried, salted or in brine
- 0307.49.0029 Loligo squid, frozen (except fillets), dried, salted or in brine, NESOI

0307.49.0050 Squid, frozen (except fillets), dried, salted or in brine, except *Loligo* squid

0307.49.0060 Cuttle fish (*Sepia officinalis*, *Rossia macrosoma*, *Sepioloa* spp.), frozen, dried, salted or in brine

(3) *Disposition of Fisheries Certificates of Origin.* The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at <http://swr.nmfs.noaa.gov/noaa370.htm>.

(i) A properly completed FCO and its attached certificates as described in § 216.91(a), if applicable, must accompany the required CBP entry documents that are filed at the time of import.

(ii) FCOs and associated certifications as described in § 216.91(a), if any, that accompany imported shipments of tuna must be submitted by the importer of record to the Tuna Tracking and Verification Program, Southwest Region, within 10 calendar days of the shipment's entry into the commerce of the United States. FCOs submitted via mail should be sent to the Tuna Tracking and Verification Program, Southwest Region, P.O. Box 32469, Long Beach, CA 90832-2469. Copies of the documents may be submitted electronically using a secure file transfer protocol (FTP) site. Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program at the following e-mail address: SWRTuna.Track@noaa.gov. The Tuna Tracking and Verification Program will facilitate secure transfer and protection of certifications by assigning a separate electronic folder for each importer. Access to the electronic folder will require a user identification and password. The Tuna Tracking and Verification Program will assign each importer a unique user identification and password. Safeguarding the confidentiality of the user identification and password is the responsibility of the importer to whom they are assigned. Copies of the documents may also be submitted via mail either on compact disc or as hard copies. All electronic submissions, whether via FTP or on compact disc, must be in Portable Document Format (PDF).

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be endorsed at each change in ownership and submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed.

(iv) Importers and exporters are required to retain their records, including FCOs, import or export documents, invoices, and bills of lading for 2 years, and such records must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region.

(4) *Contents of Fisheries Certificate of Origin.* An FCO, certified to be accurate by the exporter(s) of the accompanying shipment, must include the following information:

- (i) CBP entry identification;
- (ii) Date of entry;
- (iii) Exporter's full name and complete address;
- (iv) Importer's or consignee's full name and complete address;
- (v) Species description, product form, and HTS number;
- (vi) Total net weight of the shipment in kilograms;
- (vii) Ocean area where the fish were harvested (ETP, western Pacific Ocean, south Pacific Ocean, eastern Atlantic Ocean, western Atlantic Ocean, Caribbean Sea, Indian Ocean, or other);
- (viii) Type of fishing gear used to harvest the fish (purse seine, longline, baitboat, large-scale driftnet, gillnet, pole and line/hook and line, or other);
- (ix) Country under whose laws the harvesting vessel operated based upon the flag of the vessel or, if a certified charter vessel, the country that accepted responsibility for the vessel's fishing operations;
- (x) Dates on which the fishing trip began and ended;
- (xi) The name of the harvesting vessel;
- (xii) Dolphin-safe condition of the shipment, described by checking the appropriate statement on the form and attaching additional certifications as described in § 216.91(a) if required;
- (xiii) For shipments containing fish or fish products exported from, or harvested on the high seas by vessels of a nation known to use large-scale driftnets, as determined by the Secretary pursuant to paragraph (f)(7) of this section, the High Seas Driftnet Certification contained on the FCO must be dated and signed by a responsible government official of the large-scale driftnet nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; and

(xiv) Each importer, exporter, or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describes the shipment of fish that they accompany.

(10) *Fish refused entry.* If fish is denied entry under paragraph (f)(2) of

this section, the Port Director of CBP shall refuse to release the fish for entry into the United States.

(11) *Disposition of fish refused entry into the United States.* Fish that is denied entry under paragraph (f)(2) of this section and that is not exported under CBP supervision within 90 days shall be disposed of under CBP laws and regulations at the importer's expense. Provided, however, that any disposition shall not result in an introduction into the United States of fish caught in violation of the MMPA.

* * * * *

4. In § 216.91, revise paragraphs (a)(2)(i), (a)(2)(ii), and (a)(4) to read as follows:

§ 216.91 Dolphin-safe labeling standards.

- (a) * * *
- (2) * * *

(i) In a fishery in which the Assistant Administrator has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the ETP), unless such products are accompanied as described in § 216.24(f)(3) by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) In any other fishery unless the products are accompanied as described in § 216.24(f)(3) by a written statement executed by the Captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna were harvested;

* * * * *

(4) *Other fisheries.* By a vessel in a fishery other than one described in paragraphs (a)(1) through (a)(3) of this section that is identified by the Assistant Administrator as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied as described in § 216.24(f)(3) by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the

Assistant Administrator determines that such an observer statement is necessary.

5. In § 216.92, revise paragraph (b)(2)(ii) and the introductory text of paragraph (b)(2)(iii) to read as follows:

§ 216.92 Dolphin-safe requirements for tuna harvested in the ETP by large purse seine vessels.

(b) * * *
(2) * * *
(ii) The tuna or tuna products are accompanied as described in § 216.24(f)(3) by a properly completed FCO; and

(iii) The tuna or tuna products are accompanied as described in § 216.24(f)(3) by valid documentation signed by a representative of the appropriate IDCP member nation, containing the harvesting vessel names and tuna tracking form numbers represented in the shipment, and certifying that:

6. In § 216.93, revise paragraphs (c)(5), (e), and (f)(2) to read as follows:

§ 216.93 Tracking and verification program.

(c) * * *
(5) The handling of TTFs and the tracking and verification of tuna caught in the Convention Area by a U.S. purse seine vessel greater than 400 st (362.8 mt) carrying capacity shall be conducted consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.

(e) *Tracking imports.* All tuna products, except fresh tuna, that are imported into the United States must be accompanied as described in § 216.24(f)(3) by a properly certified FCO as required by § 216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 10 calendar days of the shipment's entry into the commerce of the United States as required by § 216.24(f)(3)(ii).

(f) * * *
(2) *Record submission.* Within 10 calendar days of receiving a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must submit to the Administrator, Southwest Region, all corresponding FCOs and required

certifications for those tuna or tuna products.

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Pacific Tuna Fisheries

7. The authority citation for part 300, subpart C, continues to read as follows:

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

8. In § 300.21, remove the definition for “Vessel Register” and add definitions for “Commercial passenger fishing vessel”, “Regional Vessel Register”, and “Tuna” in alphabetical order to read as follows:

§ 300.21 Definitions.

Commercial passenger fishing vessel means any vessel licensed for commercial passenger fishing purposes within the State out of which it is operating and from which, while under charter or hire, persons are legally permitted to conduct sportfishing activities.

Regional Vessel Register (hereafter referred to as Vessel Register) means the regional register of vessels authorized to fish for tuna and tuna-like species in the Convention Area, as established by the Inter-American Tropical Tuna Commission in June 2000.

Tuna means any fish of the genus *Thunnus* and the species *Euthynnus (Katsuwonus) pelamis*.

9. In § 300.22, revise the section heading and paragraphs (a), (b) introductory text, and (b)(2), (b)(3), (b)(4), (b)(5)(iv), and (b)(7); and add new paragraphs (b)(5)(vi), (b)(5)(vii), (b)(5)(viii), and (b)(8) to read as follows:

§ 300.22 Eastern Pacific fisheries—recordkeeping and written reports.

(a) The master or other person in charge of a commercial fishing vessel or commercial passenger fishing vessel (CPFV) authorized to fish for tuna and tuna-like species in the Convention Area, or a person authorized in writing to serve as the agent for either person, must keep an accurate log of operations conducted from the fishing vessel. For vessels greater than 400 st (362.8 mt) carrying capacity that are authorized to purse seine for tuna in the Convention Area, the log must include for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish on board, by species.

The record and bridge log maintained and submitted at the request of the IATTC shall be sufficient to comply with this paragraph, provided the items of information specified by the IATTC are accurately entered in the log. For purse seine vessels of 400 st (362.8 mt) carrying capacity or less and for non-purse seine vessels, maintaining and submitting any logbook required by existing state or federal regulation shall be sufficient to comply with this paragraph.

(b) *Vessel Register.* The Vessel Register shall include, consistent with resolutions of the IATTC, all commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area. Except as provided under paragraph (b)(1) of this section, tuna purse seine vessels must be listed on the Vessel Register and categorized as active under paragraph (b)(4)(i) of this section in order to fish for tuna and tuna-like species in the Convention Area.

(2) *Requirements for inclusion of purse seine vessels on the vessel register.* The tuna purse seine portion of the Vessel Register shall include, consistent with resolutions of the IATTC, only vessels that fished in the Convention Area prior to June 28, 2002. Inclusion on the tuna purse seine portion of the Vessel Register is valid through December 31 of each year. New tuna purse seine vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the tuna purse seine vessel or vessels being replaced.

(3) *Vessel information.* Information on each commercial fishing vessel or CPFV authorized to use purse seine, longline, drift gillnet, harpoon, troll, rod and reel, or pole and line fishing gear to fish for tuna and tuna-like species in the Convention Area for sale shall be collected by the Regional Administrator, Southwest Region, to conform to IATTC resolutions governing the Vessel Register. This information initially includes, but is not limited to, the vessel name and registration number; the name and business address of the owner(s) and managing owner(s); a photograph of the vessel with the registration number legible; previous vessel name(s) and previous flag (if known and if any); port of registry; International Radio Call Sign; vessel length, beam, and moulded depth; gross tonnage, fish hold capacity in cubic meters, and carrying capacity in metric tons; engine horsepower; date

and place where built; and type of fishing method or methods used. The required information shall be collected as part of existing information collections as described in this and other parts of the CFR.

(4) *Purse seine vessel register status.* For a purse seine vessel to be listed on the Vessel Register, and to be categorized as either "active" or "inactive," in the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator, Southwest Region, the required permit applications, written notifications, and fees as described under § 216.24(b) of this title and under paragraphs (b)(4)(i) and (b)(4)(iii) of this section.

(i) *Active status.* As early as August 1 of each year, vessel owners or managing owners may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as active for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator, Southwest Region, the vessel permit application and payment of the permit application fee and vessel assessment fee. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator, Southwest Region, written notification including, but not limited to, a vessel photograph, the vessel information as described under paragraph (b)(3) of this section, and the owner or managing owner's signature and business telephone and fax numbers. If a purse seine vessel of 400 st (362.8 mt) carrying capacity or less is required by the Agreement on the IDCP to carry an observer, the vessel owner or managing owner must also submit payment of the vessel assessment fee to the Regional Administrator, Southwest Region. Vessel permit applications and written notifications must be submitted by fax to (562) 980-4047. The Regional Administrator must receive the vessel permit application or written notification and payment of the permit application fee and vessel assessment fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application or written notification and payment of the vessel

assessment fee and permit application fee will be interpreted by the Regional Administrator as a request for a vessel to be categorized as active. The following restrictions apply to active status:

(A) The cumulative carrying capacity of all purse seine vessels categorized as active on the Vessel Register may not exceed 8,969 mt in a given year;

(B) A purse seine vessel may not be added to active status on the Vessel Register unless the captain of the vessel has obtained a valid operator permit under § 216.24(b)(2) of this title;

(C) For 2005 only, requests for vessels will be prioritized on a first-come, first-served basis according to the date and time the fax is received in the office of the Regional Administrator;

(D) Requests for active status for 2006 and subsequent years will be prioritized according to the following hierarchy:

(1) Requests received for vessels that were categorized as active in the previous year, beginning with the vessel's status in 2005, unless the request for active status was determined to be frivolous by the Regional Administrator under paragraph (b)(4)(ii) of this section;

(2) Requests received for vessels that were categorized as inactive under paragraph (b)(4)(iii) of this section in the previous year, beginning with the vessel's status in 2005;

(3) Requests for vessels not described in paragraphs (b)(4)(i)(D)(1) or (2) of this section will be prioritized on a first-come, first-served basis according to the date and time stamp printed by the incoming fax machine upon receipt, provided that the associated vessel assessment fee is paid by the applicable deadline described in § 216.24(b)(6)(iii) of this title; and

(4) Requests received from owners or managing owners of vessels that were determined, by the Regional Administrator, to have made a frivolous request for active status under paragraph (b)(4)(ii) of this section.

(ii) *Frivolous requests for active status.* Beginning with requests made for 2005, a request for active status under paragraph (b)(4)(i) of this section will be considered frivolous, unless as a result of force majeure or other extraordinary circumstances as determined by the Regional Administrator, if, for a vessel categorized as active in a given calendar year,

(A) 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

(B) The vessel did not fish for tuna at all in the Convention Area in that same year.

(iii) *Inactive status.* From August 1 through November 30 of each year, vessel owners or managing owners may request that purse seine vessels qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator, Southwest Region, payment of the associated vessel assessment fee. Payment of the vessel assessment fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit by mail to the Regional Administrator, Southwest Region, a written notification including, but not limited to, the vessel name and registration number and the vessel owner or managing owner's name, signature, business address, and business telephone and fax numbers. Payment of the vessel assessment fee is not required for vessels of 400 st (362.8 mt) carrying capacity or less to be categorized as inactive. At any time during the year, a vessel owner or managing owner may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the remainder of the calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the Regional Administrator payment of the associated vessel assessment fee, plus a 10 percent surcharge of the fee if the vessel was listed on the Vessel Register in the previous year. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the Regional Administrator written notification as described in this paragraph (payment of the vessel assessment fee is not required).

(5) * * *

(iv) For failure to pay a penalty or for default on a penalty payment agreement resulting from a final agency action for a violation;

* * * * *

(vi) If the vessel does not have a valid state registration or U.S. Coast Guard certificate of documentation;

(vii) For tuna purse seine vessels, upon receipt of written notification from the owner or managing owner of the intent to transfer the vessel to foreign registry and flag, as described in paragraph (b)(8) of this section; or

(viii) For tuna purse seine vessels, if the request for active status on the Vessel Register has been determined to be a frivolous request.

* * * * *

(7) *Procedures for replacing purse seine vessels removed from the Vessel Register.*

(i) A purse seine vessel in excess of 400 st (362.8 mt) carrying capacity that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner or managing owner of the vessel pays the vessel assessment fee associated with inactive status. Payments received will be subject to a 10 percent surcharge for vessels that were listed on the Vessel Register in the calendar year prior to the year for which inactive status was requested. A purse seine vessel of 400 st (362.8 mt) carrying capacity or less that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner or managing owner of the vessel submits written notification as described in paragraph (b)(4)(iii) of this section.

(ii) A purse seine vessel may be added to the Vessel Register and categorized as active in order to replace a vessel removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity of the active vessels does not exceed 8,969 mt and the owner submits a complete request under paragraph (b)(7)(iv) or (b)(7)(v) of this section.

(iii) After a purse seine vessel categorized as active is removed from the Vessel Register, the Regional Administrator, Southwest Region, will notify owners or managing owners of vessels categorized as inactive that replacement capacity is available on the active list of the Vessel Register. In the event that owners of inactive vessels do not request to replace a removed vessel, the Regional Administrator will notify

owners of vessels eligible for, but not included on, the Vessel Register that replacement capacity is available on the active list of the Vessel Register.

(iv) Vessel owners or managing owners may request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active to replace a vessel removed from the Vessel Register by submitting to the Regional Administrator, Southwest Region, written notification as described in paragraph (b)(4)(i) of this section and, only if the vessel is required by the Agreement on the IDCP to carry an observer, payment of the vessel assessment fee within 10 business days after submission of the faxed written notification. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel being replaced. Payments received will be subject to a 10 percent surcharge for vessels that were listed on the Vessel Register at the beginning of the calendar year, or in the calendar year prior to the year, for which active status was requested.

(v) Vessel owners or managing owners may request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active to replace a vessel removed from the Vessel Register by submitting to the Regional Administrator, Southwest Region, the vessel permit application as described under § 216.24(b) of this title and payment of the vessel assessment fee and permit application fee within 10 business days after submission of the faxed vessel permit application for the replacement vessel. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel being replaced, and the captain of the replacement vessel possesses an operator permit under § 216.24(b) of this title. Payments received will be subject to a 10 percent surcharge for vessels that were listed on the Vessel Register at the beginning of the calendar year, or in the calendar year prior to the year, for which active status was requested.

(vi) The Regional Administrator, Southwest Region, will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

(8) The owner or managing owner of a purse seine vessel listed on the Vessel Register must provide written notification to the Regional Administrator, Southwest Region, prior to submitting an application for transfer of the vessel to foreign registry and flag. Written notification must be submitted

by mail and received by the Regional Administrator at least 10 business days prior to submission of the application for transfer. The written notification must include the vessel name and registration number; the expected date that the application for transfer will be submitted; and the vessel owner or managing owner's name and signature. Vessels that require approval by the U.S. Maritime Administration prior to transfer of the vessel to foreign registry and flag will not be subject to the notification requirement described in this paragraph.

10. In § 300.23, revise the section heading to read as follows:

**§ 300.23 Eastern Pacific fisheries—
Persons and vessels exempted.**

* * * * *

11. In § 300.24, remove the semicolons at the end of paragraphs (b), (e), (f), and (g) and replace them with periods; remove “; or” at the end of paragraph (h) and replace it with a period; and add a new paragraph (j) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(j) Fail to provide written notification as described under § 300.22(b)(8) to the Regional Administrator, Southwest Region, at least 10 business days prior to submission of an application to transfer a purse seine vessel listed on the Vessel Register to foreign registry and flag, unless transfer of the vessel requires approval by the U.S. Maritime Administration.

12. In § 300.25, revise paragraph (a), the heading for paragraph (e) and revise paragraph (e)(1) to read as follows:

§ 300.25 Eastern Pacific fisheries management.

(a) *Notification of IATTC recommendations and resolutions.* Fishery management resolutions made by the IATTC and approved by the Department of State will be promulgated in the **Federal Register** via appropriate rulemaking. The publication in the **Federal Register** will summarize the fishery management resolutions and respond to any public comments received by NMFS.

* * * * *

(e) *Bycatch reduction measures—(1)* All purse seine vessels must retain on board and land all bigeye, skipjack, and yellowfin tuna brought on board the vessel after a set, except fish deemed unfit for human consumption for other than reason of size. This requirement shall not apply to the last set of a trip if the available well capacity is

insufficient to accommodate the entire fish catch brought on board.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 071003556-7575-01]

RIN 0648-AW08

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Amendment 15

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 15 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 15 would modify the FMP to implement a limited entry program for the non-tribal Pacific whiting fishery. Amendment 15 was approved by NMFS on June 18, 2008, and in accordance with the notification procedures of the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Fishery Management Council was notified of this approval. Amendment 15 is intended to serve as an interim measure to limit potential participation in the Pacific whiting fishery within the U.S. West Coast Exclusive Economic Zone until implementation of a trawl rationalization program under Amendment 20 to the Groundfish FMP.

DATES: Comments on this proposed rule must be received on or before August 11, 2008.

ADDRESSES: Amendment 15 is available on the Pacific Fishery Management Council's (Council's or Pacific Council's) website at: <http://www.pcouncil.org/groundfish/gffmp.html>.

You may submit comments, identified by RIN 0648-AW08 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the FedereleRulemaking Portal: <http://www.regulations.gov>.
- Fax: 206-526-6736, Attn: Becky Renko.

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Becky Renko, 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Northwest Region (see **ADDRESSES**) and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285. Send comments on collection-of-information requirements to the NMFS address above and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington DC 20503 (Attn: NOAA Desk Officer).

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Becky Renko, phone: 206-526-6110, fax: 206-526-6736, or e-mail: becky.renko@noaa.gov, or for permitting information, Kevin Ford, phone: 206-526-6115, fax: 206-526-6736, or e-mail: kevin.ford@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the **Federal Register's** Web site at http://www.access.gpo.gov/su_docs/aces/aces140.html. Background information and documents are available at the NMFS Northwest Region Web site at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm>.

NMFS is proposing this rule to implement Amendment 15 to the FMP, which would create a limited entry program for the three non-tribal sectors of the Pacific whiting fishery off the U.S. West Coast. Under current Federal regulations, Pacific whiting shoreside fishery catcher vessels, mothership catcher vessels, and catcher/processor vessels, must be registered to a groundfish limited entry permit. The limited entry program has been in place since 1994 and allows appropriately registered vessels to harvest groundfish,

targeting any of the 90+ species managed under the FMP. The proposed action to implement Amendment 15 to the FMP would require vessels that wish to harvest and/or process Pacific whiting in the non-tribal Pacific whiting fishery to qualify for a Pacific whiting vessel license limitation program. This is in addition to the requirement for harvesting vessels to be registered for use with groundfish limited entry permits. Amendment 15 is intended to serve as an interim measure that sunsets when the Pacific Fishery Management Council adopts and the National Marine Fisheries Service implements a trawl rationalization program under Amendment 20 to the Pacific Groundfish FMP. Amendment 20 is currently under development by the Council, which adopted its preliminary preferred alternative at the June Council meeting. The Council anticipates taking final action on the trawl rationalization program in November 2008. If NMFS approves the Amendment, implementation is scheduled for late 2010, at which time Amendment 15 would no longer be effective. If development and implementation of Amendment 20 is delayed beyond that point, NMFS intends to request that the Council reconsider the provisions of Amendment 15.

NMFS published a Notice of Availability for Amendment 15 on March 19, 2008 (73 FR 14765), and is requested public comment on it through May 19, 2008. Amendment 15 was approved by NMFS on June 18, 2008.

Background

Pacific whiting (*Merluccius productus*), also known as Pacific hake, is a semi-pelagic and relatively productive species that ranges from Sanak Island in the western Gulf of Alaska to Magdalena Bay, Baja California Sur, Mexico. They are most abundant in the California Current System, off the U.S. West Coast. Pacific whiting landings represent the most significant single-species contribution to West Coast groundfish landings from the 90+ groundfish species managed under the FMP by several orders of magnitude. In general, Pacific whiting is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span when compared to other groundfish species. In 1987, the Pacific whiting biomass was at a historically high level due to an exceptionally large number of fish that had spawned in 1980 and 1984 (fished spawned during a particular year are referred to as year classes). As these large year classes of fish passed through