

proposal, and it will allow time for cooperative efforts to refine the proposal. We will work toward adoption of a final rule prior to the 2011 summer boating season. We will consider all comments and information received during the comment period in preparing a final rule.

DATES: Written or electronic comments on the proposed rule and draft Environmental Assessment (EA) from all interested parties are encouraged and must be received no later than January 15, 2010. All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public.

ADDRESSES: Comments on the proposed rule, draft EA and any of the supporting documents can be submitted by any of the following methods:

- *E-mail:* orca.plan@noaa.gov.
- *Federal e-rulemaking Portal:* <http://www.regulations.gov>.

• *Mail:* Assistant Regional Administrator, Protected Resources Division, Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115.

The draft EA and other supporting documents are available on Regulations.gov and the NMFS Northwest Region Web site at <http://www.nwr.noaa.gov/>.

You may submit information and comments concerning this Proposed Rule, the draft EA, or any of the supporting documents by any one of several methods identified above. We will consider all comments and information received during the comment period in preparing a final rule. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment- including your personal identifying information- may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Lynne Barre, Northwest Regional Office, 206-526-4745; or Trevor Spradlin, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2009, NMFS proposed regulations under the Endangered Species Act and Marine Mammal Protection Act to prohibit vessels from approaching killer whales within 200

yards and from parking in the path of whales for vessels in inland waters of Washington State (74 FR 37674). The proposed regulations would also prohibit vessels from entering a conservation area during a defined season. Certain vessels would be exempt from the prohibitions. The purpose of the action is to protect killer whales from interference and noise associated with vessels. In the final rule announcing the endangered listing of Southern Resident killer whales NMFS identified disturbance and sound associated with vessels as a potential contributing factor in the recent decline of this population. The Recovery Plan for Southern Resident killer whales calls for evaluating current guidelines and assessing the need for regulations and/or protected areas (73 FR 4176; January 24, 2008). We developed the proposed rule after considering comments submitted in response to an Advance Notice of Proposed Rulemaking (72 FR 13464; March 22, 2007) and preparing a draft environmental assessment.

Dated: October 13, 2009.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9-25063 Filed 10-16-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 0907231161-91189-01]

RIN 0648-AY08

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Longline and Purse Seine Fisheries in the Eastern Pacific Ocean in 2009, 2010, and 2011

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the Tuna Conventions Act of 1950 (Act) to implement a decision of the Inter-American Tropical Tuna Commission (IATTC). That decision requires, among other things, that members of the IATTC, including the United States, ensure that catches in the eastern Pacific Ocean (EPO) of bigeye tuna (*Thunnus obesus*) by longline vessels greater than 24 meters in length

do not exceed specified levels in each of the years 2009, 2010, and 2011, and that purse seine vessels class sizes 4-6 do not fish in the EPO during an established closure period. This action is necessary for the United States to satisfy its obligations under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna (Convention), to which it is a Contracting Party.

DATES: Comments must be submitted in writing by November 9, 2009. A public hearing will be held at 9 a.m. to 12 p.m. PDT, October 21, 2009, Long Beach, CA.

ADDRESSES: You may submit comments on this proposed rule, identified by 0648-AY08, the Initial Regulatory Flexibility Analysis (IRFA), or the draft environmental assessment (EA) prepared for the proposed rule by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal, at <http://www.regulations.gov>.

• *Mail:* Rod McInnis, Regional Administrator, NMFS Southwest Regional Office (SWR), 501 W. Ocean Blvd, Suite 4200, Long Beach, Ca 90802. Include the identifier "0648-AY08" in the comments.

• *Public hearing:* The hearing will be held at 501 W. Ocean Boulevard, Suite 4200, Long Beach, Ca 90802. The public may also participate in the public hearing via conference line: 888-989-6480; participant passcode: 29574.

Instructions: All comments received are part of the public record and generally will be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name and address) 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 (if submitting comments via the Federal e-Rulemaking portal, enter "N/A" in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the EA prepared under the authority of the National Environmental Policy Act and the IRFA are available at <http://swr.nmfs.noaa.gov/> or may be obtained from Rod McInnis, Regional Administrator, NMFS SWR (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Heidi Hermsmeyer, NMFS SWR, 562-980-4036.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is also accessible at <http://www.gpoaccess.gov/fr>.

Background on the Convention and the IATTC

The Convention entered into force in May 1949. The full text of the Convention is available at: http://www.iattc.org/PDFFiles/IATTC_convention_1949.pdf. The Convention Area includes the waters bounded by the coast of the Americas, the 40 N. and 40 S. parallels, and the 150 W. meridian. The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS, and has provisions related to non-target, associated, and dependent species in such fisheries.

The IATTC, established under the Convention, is comprised of the Members, including High Contracting Parties to the Convention and fishing entities that have agreed to be bound by the regime established by the Convention. Other entities that participate in the IATTC include Cooperating Non-Parties, Cooperating Fishing Entities, and Regional Economic Integration Organizations. Cooperating Fishing Entities participate with the authorization of the High Contracting Parties with responsibility for the conduct of their foreign affairs. Cooperating Non-Parties are identified by the IATTC on a yearly basis. In accepting Cooperating Non-Party status, such States agree to implement the decisions of the IATTC in the same manner as Members.

The current Members of the IATTC are Colombia, Costa Rica, Ecuador, El Salvador, France, Guatemala, Japan, Mexico, Nicaragua, Panama, Peru, Republic of Korea, Spain, United States, Vanuatu, and Venezuela. The current Cooperating Non-Parties, Cooperating Fishing Entities and Regional Economic Integration Organization are Belize, Canada, China, Cook Islands, Kiribati, Chinese Taipei, and the European Union.

International Obligations of the United States under the Convention

As a Contracting Party to the Convention and a Member of the IATTC, the United States is legally bound to implement the decisions of the IATTC. The Act (16 U.S.C. 951–961 and 971 *et seq.*) authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard (USCG) is operating (currently the Department of Homeland Security), to promulgate such

regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the IATTC. The authority to promulgate regulations has been delegated to NMFS.

IATTC Decisions Regarding Longline and Purse Seine Fisheries

At its Eightieth Meeting, in June 2009, the IATTC adopted the Resolution on a Multiannual Program for the Conservation of Tuna in the Eastern Pacific Ocean in 2009–2011 (Resolution C–09–01) related to bigeye and yellowfin tunas (*Thunnus albacares*) in the EPO. The resolution, available with other decisions of the IATTC at <http://www.iattc.org/ResolutionsActiveENG.htm>, places certain obligations on the IATTC's High Contracting Parties, Cooperating Non-Parties, Cooperating Fishing Entity, and Regional Economic Integration Organization (collectively, CPCs). With respect to bigeye tuna, the resolution is based in part on the recommendations and analysis of IATTC scientific staff and the 2009 stock assessment completed by IATTC staff. The assessment verified that the stock of bigeye tuna in the EPO is experiencing a fishing mortality rate greater than the rate associated with average maximum sustainable yield, and the spawning stock biomass is below that which supports average maximum sustainable yield, thus the stock is subject to overfishing and is overfished. The Convention calls for the IATTC to adopt measures designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors. Accordingly, Resolution C–09–01 has the objective of reducing, over the period 2009–2011, the fishing mortality rate for bigeye tuna in the EPO. It is estimated that the fishing mortality of bigeye tuna would be reduced by 19% in 2009, 20% in 2010, and 24% in 2010 based on averages over the 1995–2003 timeframe.

Among other provisions, the resolution establishes specific catch limits for bigeye tuna captured by longline vessels over 24 meters in length (large-scale longline vessels) for the years 2009, 2010, and 2011. The limits are prescribed relative to catches made during specified baseline periods, and commensurate with the estimated reductions in catch of bigeye tuna in the purse seine fishery with the implementation of the closure period. China, Japan, Korea, and Chinese Taipei, the countries with the highest levels of bigeye tuna catch in longline fisheries in the EPO, have specific catch

levels for 2009 and 2010. Other CPCs must ensure their annual longline catches of bigeye tuna in the EPO during 2009–2010 do not exceed the greater of 500 metric tons (mt) or their respective catches of bigeye tuna in 2001. The U.S. catch of bigeye tuna in longline fisheries in the EPO for 2001 was only about 150 mt; therefore, the U.S. longline catch limit of bigeye tuna would be 500 mt in the EPO for 2009 and 2010. For 2011, the total annual longline quotas of bigeye tuna in the EPO would be adjusted to be commensurate with the measures adopted for purse seine vessels by the Commission in 2011.

IATTC Resolution C–09–01 also establishes a purse seine closure for all purse seine vessels class sizes 4–6 in the EPO for a period of 59 days in 2009, 62 days in 2010, and 73 days in 2011. Each CPC must choose one of two periods in each year as follows: for 2009, August 1 to September 28, or November 21 to January 18; for 2010, July 29 to September 28, or November 18 to January 18; and for 2011, July 18 to September 28, or November 7 to January 18. In 2011, the results of the conservation measures adopted will be evaluated by the Commission, in the context of the results of the stock assessments for 2011 and, depending on the conclusions reached by the scientific staff of the Commission, the period of duration of the closure for that year shall be ratified or adjusted. Notwithstanding these provisions, purse seine vessels of IATTC capacity class size 4 (between 182 and 272 mt carrying capacity) will be able to make one single fishing trip of up to 30 days duration during the specified closure periods, provided that any such vessel carries an observer of the On-Board Observer Program of the Agreement on the International Dolphin Conservation Program (AIDCP).

IATTC Resolution C–09–01 also establishes a closure for all purse seine vessels class sizes 4–6 within the area between 96° and 110° W. longitude and between 4° N. and 3° S. latitude from 0000 hours on September 29 to 2400 hours on October 29 for 2009, 2010, and 2011 (also known as “el corralito” closure).

Furthermore, purse seine vessels would continue to be required to retain on board and then land all skipjack (*Katsuwonus pelamis*), bigeye, and yellowfin tuna caught; however, there would be a minor change to the existing regulations at 50 CFR 300.24(e) and 300.25(e)(1) that would amend the exception to the tuna retention measure and make the regulations only applicable to purse seine vessels class sizes 4–6. Tuna would not need to be

retained for fish considered unfit for human consumption for reasons other than size, and the single exemption of this would be the final set of a trip, when there may be insufficient well space remaining to accommodate all the tuna caught in that set. Currently the language is slightly different than this but with similar intent, so the amendment would serve to make the regulatory language consistent with IATTC Resolution C-09-01, but would most likely not result in any changes to the purse seine fishery. The efficacy and impacts of the tuna retention requirement will be reviewed at the annual Commission meeting in 2010 and the Commission will decide whether to continue it.

Proposed Action

Restrictions in the Longline Fishery

The bigeye tuna limits established in Resolution C-09-01 are termed "catch" limits. The annual limit on harvests by large-scale longline vessels covers all bigeye tuna that is retained on board, as opposed to all bigeye tuna caught. Accordingly, the proposed rule would establish a limit of 500 mt of bigeye tuna that is caught and retained. The limit would have the purpose of reducing fishing mortality of EPO bigeye tuna. Once NMFS determines in any of the years 2009, 2010, or 2011 that the limit is expected to be reached by a specific future date in that year, NMFS would publish a notice in the **Federal Register** announcing that the limit is expected to be reached and that specific restrictions will be effective on that particular date until the end of the calendar year. NMFS would publish the notice at least seven calendar days before the effective date of the restrictions to provide fishermen advance notice of the restrictions. NMFS would also endeavor to make publicly available, such as on a website, regularly updated estimates and/or projections of bigeye tuna landings in order to help fishermen plan for the possibility of the limit being reached. In Resolution C-09-01, the IATTC has reserved the option of reversing or amending its adoption of the bigeye tuna catch limits in longline fisheries at its regular annual session in June 2011. If such a decision occurs, NMFS will take appropriate action to rescind any closed areas that are established by regulation.

Starting on the announced date and extending through the last day of that calendar year, it would be prohibited to use a U.S. fishing vessel greater than 24 meters in length to retain on board,

transship, or land bigeye tuna captured in the Convention Area by longline gear. Bigeye tuna caught incidentally in the longline fishery starting on the announced date (e.g., in the shallow-set longline fishery targeting swordfish) would be required to be discarded. Any bigeye tuna already on board an applicable longline fishing vessel upon the effective date of the restrictions may be retained on board, transshipped, and/or landed, provided that they are landed within 14 days after the restrictions become effective. In the case of a vessel that has declared to NMFS pursuant to 50 CFR 665.23(a) [applicable to the Hawaii-based longline fishery] that the current trip type is shallow-setting, the 14-day limit would be waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the restrictions, as recorded by the NMFS observer on board the vessel. Starting on the announced date and extending through the last day of that calendar year, it would also be prohibited to transship bigeye tuna caught in the Convention Area by a longline vessel greater than 24 meters in length to any vessel other than a U.S. fishing vessel operating in compliance with a valid permit issued under 50 CFR 660.707 or 665.21.

These restrictions would not apply to bigeye tuna caught by longline vessels 24 meters in length or less, or to longline gear used outside of the Convention Area, such as in the western and central Pacific Ocean. However, to help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, there would be two additional, related, prohibitions that would be in effect starting on the announced date and extending through the last day of that calendar year. First, it would be prohibited to fish with a large-scale longline vessel both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel, unless on a declared shallow-setting trip, would still be required to land any bigeye tuna taken within the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a large-scale longline vessel is used to fish outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the

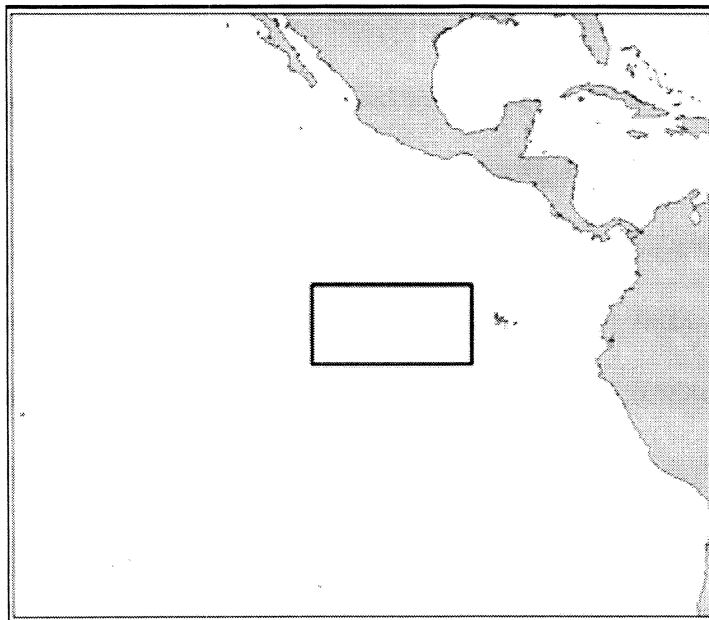
longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area.

Restrictions in the Purse Seine Fishery

The proposed rule would prohibit fishing in the EPO by all U.S. purse seine vessels class sizes 4-6 for a period of 59 days in 2009, 62 days in 2010, and 73 days in 2011. Each CPC is required to choose one of two periods in each year to implement the closure for all of its purse seine vessels. For 2009, NMFS does not have the discretion to choose the earlier closure period which would have started on August 1, 2009, due to the timeframe associated with the rulemaking process in the United States. Thus, for 2009, the closure would be from November 21, 2009, to January 18, 2010. For 2010, the options are: i) July 29, 2010, to September 28, 2010, or ii) November 18, 2010, to January 18, 2011. For 2011, the options are: i) July 18, 2011, to September 28, 2011, or ii) November 7, 2011, to January 18, 2012. NMFS will select one of the two closure periods for 2010 and 2011 after consideration of public comments. Notwithstanding the general prohibition on fishing during the closure period, a class size 4 vessel would be allowed to make one single fishing trip of up to 30 days duration during the specified closure periods, provided that any such vessel carries an observer. In Resolution C-09-01, the IATTC has reserved the option of reversing its adoption of the closure at its regular annual meeting in June 2011. If such a decision occurs, NMFS would initiate rulemaking to implement the IATTC decision.

The proposed rule would also establish an additional area closed to fishing for skipjack, bigeye, and yellowfin tunas by U.S. purse seine vessels class sizes 4-6 from September 29 to October 29 in 2009, 2010, and 2011. The area is a rectangle to the west of the Galapagos Islands and was chosen due to the high levels of juvenile bigeye tuna catch by purse seiners in the area. The area is between 96 and 110 W. longitude and between 4 N. and 3 S. latitude in the Convention Area and is depicted in Figure 1. Purse seine vessels class size 4-6 may transit the closed areas with all fishing gear stowed in a manner so as not to be readily available for fishing.

Figure 1. Proposed closure area. The area that would be closed to purse seine fishing is the high seas area within the rectangle bounded by the bold black lines. This map displays indicative maritime boundaries only.



Proposed Closure Area

Purse seine vessels would also continue to be required to retain and land all skipjack, bigeye, and yellowfin tunas; however, there would be some minor changes to the existing regulations at 50 CFR 300.24(e) and 300.25(e)(1). The regulations would be amended to be consistent with IATTC Resolution C-09-01, so the catch retention measure would only be applicable to purse seine vessels class size 4-6, and the exception to the current tuna retention measure would be adjusted accordingly. Tuna would not need to be retained for fish considered unfit for human consumption for reasons other than size, and the single exemption of this would be the final set of a trip, when there may be insufficient well space remaining to accommodate all the tuna caught in that set. Currently the regulatory language is slightly different than this but with similar intent, so the amendment would serve to make the regulatory language consistent with the resolution, but would most likely not result in any significant changes to the purse seine fishery. The catch retention requirement would then remain in effect through December 31, 2011. In Resolution C-09-01, the IATTC has reserved the option of reversing its adoption of the catch retention measure at its regular annual session in 2010. If such a decision occurs, NMFS will take appropriate action to rescind the tuna retention provision.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tuna Conventions Act and other applicable laws, subject to further consideration after public comment.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. The results of the analysis are stated below. A copy of this analysis is available from NMFS (see ADDRESSES).

The purpose of this proposed rule is to implement IATTC Resolution C-09-01 which has the conservation objective of reducing the fishing mortality rate of bigeye tuna in the EPO. This action is necessary for the United States to satisfy its international obligations under the Convention, and reduce fishing pressure on bigeye tuna, a shared international resource which is currently subject to overfishing according to NMFS.

Longline Fishery

The proposed rule would apply to owners and operators of U.S. longline vessels over 24 meters length overall, and U.S. purse seine vessels class sizes

4-6 fishing for yellowfin, bigeye, and skipjack tunas in the Convention Area. The total number of affected longline vessels is approximated by the average number of U.S. large-scale longline vessels that have caught bigeye tuna in the EPO in 2005-2008. In each of the years 2005 through 2008, the number of large-scale longline vessels that caught bigeye in the EPO were 18, 8, 18, and 30, respectively. Thus approximately 19 longline vessels on average have the potential to be affected by this proposed rule, if adopted. The majority of the longline vessels that may be affected by this proposed rule are based out of Hawaii and American Samoa. There is also one longline vessel based out of California that would be affected by the proposed rule. These longline vessels target bigeye tuna using deep sets, and during certain parts of the year, portions of the Hawaii and American Samoa fleet target swordfish using shallow sets.

Most of the Hawaii and American Samoa fleets' fishing effort has traditionally been in the WCPO, but fishing has also taken place in the EPO. The proportion of the large-scale longline vessels annual bigeye tuna catches that were captured in the EPO from 2005 through 2008 ranged from 5 percent to 24 percent, and averaged 14 percent. By far most of the U.S. annual EPO bigeye tuna catch has typically been made in the second and third quarters of the year; in the period 2005-2008 the percentages caught in the first, second, third, and fourth quarters were 19, 25, 51, and 5 percent, respectively.

As an indication of the size of businesses in the fishery, average annual fleet-wide ex-vessel revenues during 2005–2007 were about \$60 million. Given the number of vessels active during that period (127, on average), this indicates an average of about \$500,000 in annual revenue per vessel, thus all of the businesses affected by the longline measures would be considered small business entities.

For the purpose of projecting baseline conditions for the longline fishery under no action, this analysis relies on fishery performance from 2005 through 2008, since prior to 2005 the longline fishery regulations underwent major changes (the swordfish-directed shallow-set longline fishery was closed in 2001 and reopened in 2004 with limits on fishing effort and turtle interactions). Bigeye tuna landings from 2005 through 2008 suggest that it is unlikely that the proposed limit would be reached in any of the years during which the limit would be in effect (2009, 2010, and 2011). The proposed limit, 500 mt, is less than the amount landed by large-scale longline vessels in 2005–2008. Large-scale longline vessels fishing in the EPO caught about 166 mt of bigeye tuna in 2005, 51 mt of bigeye tuna in 2006, 118 mt of bigeye tuna in 2007, and 325 mt of bigeye tuna in 2008. Thus, it is estimated that even with a large increase in the catch rates of bigeye tuna in the EPO the 500 mt catch limit would not be reached in any of the applicable years (2009–2011).

In summary, all entities affected by the bigeye quota in longline fisheries are believed to be small entities, so small entities would not be disproportionately affected relative to large entities. In addition, this part of the proposed rule is not likely to have a significant impact on a substantial number of small entities because it is unlikely that the bigeye landings limit that would be imposed on large-scale longline vessels would be reached in any given year.

Purse Seine Fishery

The total number of affected purse seine vessels is approximated by the current number of U.S. purse seine vessels class size 4–6 authorized to fish in the IATTC Convention Area. As of July 2009, there were five U.S. purse seine vessels listed on the IATTC Vessel Register; two are class size 5 (273 to 363 mt carrying capacity) and three are class size 6 (greater than 363 mt carrying capacity). Purse seine vessels class sizes 5 and 6 usually fish outside U.S. waters and deliver their catch to U.S. (e.g., American Samoa) or foreign (e.g., Ecuador, Mexico, Colombia, Costa Rica) ports. Skipjack and yellowfin tuna are

the primary target species in the purse seine fishery, and bigeye tuna is incidentally targeted. Class size 6 vessels are required to have 100 percent observer coverage, while class size 5 vessels are not required to carry an observer. Purse seine vessels class size 5 would be considered small business entities (revenues equal to or less than \$4 million per year). It is estimated that from 2004–2008, the majority, if not all, class size 5 U.S. purse seine vessels have had revenues of less than \$0.5 million per year. Class size 6 vessels are categorized as large business entities (revenues in excess of \$4 million per year). A large purse seine vessel typically generates about 4,000 to 5,000 mt of tuna valued at about \$4 to \$5 million per year.

It is estimated that purse seine sets would be prohibited for 16 percent of the year in 2009 (59 day closure/365 days), 17 percent of the year in 2010 (61 day closure/365 days), and 20 percent of the year in 2011 (73 day closure/365 days), thus catches would be expected to be affected accordingly unless effort was shifted to areas outside of the Convention Area during the closure period, or to different times of the year when there is no closure. The affected vessels are capable of fishing outside of the closure area (i.e., in the WCPO) during the closure period and/or for the remainder of the year, since the fishery continues year round, and vessels tend to use relatively short closures (such as these) for regular vessel maintenance. Fishing in the WCPO may produce additional costs to some of the affected vessels that are based out of the U.S. West Coast and primarily fish in the EPO due to the increase in costs associated with fishing further away from port. In addition, if a vessel has already undergone the necessary maintenance and repairs for 2009, the closure could result in economic costs to the vessel owner.

Other factors that have the potential to inhibit these vessels from fishing outside of the EPO include licensing availability and costs, and the recent implementation of effort limits for purse seine vessels fishing in the WCPO. It is assumed that fishing in the WCPO is the only practical geographic alternative for these vessels. Purse seine vessels fishing in the WCPO under the South Pacific Tuna Treaty (SPTT) are required to license their vessels; the maximum number of licensed vessels allowed in the U.S. purse seine fishery in the WCPO is 40 and currently there are 39 licensed vessels. The vessel registration fee is about \$3,250 per vessel. The three class size 6 purse seine vessels that are authorized to fish in the Convention

Area are already registered under the SPTT. It may not be economically viable for the class size 5 purse seine vessels to register under the SPTT and fish in the WCPO because of their smaller carrying capacity and the increased costs associated with fishing far from port. At least one of the class size 5 vessels would not be able to register to fish in the WCPO because only one license is available.

In addition, a Final Rule published in the **Federal Register** on August 4, 2009, prohibits purse seine sets around FADs, deploy FADs, or service FADs in the WCPO from July 1 to September 30 in 2010 and 2011, and fishing effort limits were established for 2009 through 2011 on the number of fishing days that may be spent by the U.S. purse seine fleet on the high seas in the WCPO and in areas under U.S. jurisdiction (i.e., the U.S. EEZ) (74 FR 38544, August 4, 2009). However, according to an analysis of the impacts of the effort limits on the purse seine fishery in the WCPO, prepared by NMFS for the Final EA, the effort limit may not represent real change from the status quo as the effort limit is set at approximately the level expected to be exerted by 40 vessels. In addition, during the FAD prohibition period, purse seine vessels would still be permitted to make purse seine sets on unassociated schools of tuna, which generally results in a different catch composition.

In summary, two small business entities, and three large business entities may be affected by the purse seine measures. Small entities would not be disproportionately affected relative to large entities because it is likely that these entities would be able to fish during the rest of the year when the fishery is not subject to a closure, and it may be possible for at least one of these vessels to obtain the necessary license to fish in the WCPO during the closure period. In addition, this part of the proposed rule is not likely to have a significant impact on a substantial number of small entities because only two vessels may be affected and it is estimated that their fishing effort will not change much from the status quo.

NMFS compared the effects of the proposed rule and various alternatives to the proposed rule on small business entities. For the longline fishery, there was a no-action alternative and two action alternatives. One of the action alternatives would prohibit all longline fishing in the Convention Area once the limit is reached, rather than just prohibiting the retention, transshipment, and landing of bigeye tuna caught in the Convention Area. The other action alternative would

prohibit deep-set longline fishing in the Convention Area once the limit is reached, allowing shallow-set longline fishing in the Convention Area to continue, provided that no bigeye tuna and no yellowfin tuna caught in the Convention Area are retained, transshipped, or landed. It is estimated that the bigeye quota would not be reached in any year based on a forecast conducted by the PIFSC, thus fishing effort would not be affected and the proposed action and the alternatives are not likely to have an economic impact on small business entities. However, in the unlikely event that the bigeye quota were reached, both of these alternatives would have greater economic impacts on small entities as they would place greater restrictions on the fishery compared to the proposed action.

For the EPO purse seine closure, the members of the IATTC are given the discretion to choose between two options for when to implement the closure period in each year. Thus, there is one action alternative and one no-action alternative for each applicable year which differs from the proposed action in terms of when the closure is implemented. However, based on catch data from 2004–2009, small entities have historically made more tuna landings in the EPO during the alternative's closure period (July through September) compared to the proposed closure period (November through January). Thus, this option would not minimize the economic impact on small entities and has the potential to increase it. There were no alternatives for the 30-day purse seine closure to the west of the Galapagos from 2009–2011 and for the tuna retention measure which would accomplish the stated objectives of Resolution C–09–01 and which would minimize any significant economic impact on the affected small entities.

There are no reporting, recordkeeping or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap or conflict with this proposed rule.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: October 13, 2009.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 300, the heading

for subpart C and subpart C are proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

1. The authority citation for 50 CFR part 300, subpart C, continues to read as follows:

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

2. In § 300.21, the definition of “Fishing trip” is revised and a definition of “Longline gear” is added, in alphabetical order, to read as follows:

§ 300.21 Definitions.

* * * * *

Fishing trip means a period of time during which a fishing vessel is used for fishing, beginning when the vessel leaves port and ending when the vessel lands fish.

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Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nautical mile in length, is suspended horizontally in the water column anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

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3. In § 300.24, paragraph (e) is revised, and new paragraphs (k) through (n) are added to read as follows:

§ 300.24 Prohibitions.

* * * * *

(e) Fail to retain any bigeye, skipjack, or yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 using purse seine gear in the Convention Area, except fish considered unfit for human consumption due to reasons other than size, and except on the last set of the trip if there is insufficient well capacity to accommodate the entire catch.

* * * * *

(k) Use a fishing vessel over 24 meters in length to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area or to fish in contravention of § 300.25(b)(4)(i) or (ii).

(l) Use a fishing vessel over 24 meters in length to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area on the same fishing trip in contravention of § 300.25(b)(4)(iii).

(m) Fail to stow gear as required in § 300.25(b)(4)(iv) or (f)(3).

(n) Use a fishing vessel of class size 4–6 to fish with purse seine gear in the Convention Area in contravention of § 300.25(f)(1) or (2).

4. In § 300.25, paragraphs (b) and (e)(1) are revised, and paragraph (f) is added to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(b) *Tuna quotas in the longline fishery in the EPO.*

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

(2) For each of the calendar years 2009, 2010, and 2011, there is a limit of 500 metric tons of bigeye tuna that may be captured and landed by longline gear in the Convention Area by fishing vessels of the United States that are over 24 meters in length.

(3) NMFS will monitor bigeye tuna landings with respect to the limit established under paragraph (b)(2) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit in any year is expected to be reached by a specific future date, and at least 7 calendar days in advance of that date, NMFS will publish a notice in the **Federal Register** announcing that the limit has been reached and that the restrictions described in paragraphs (b)(4) of this section will be in effect through the end of the calendar year.

(4) Once an announcement is made pursuant to paragraph (b)(3) of this section, the following restrictions will apply during the period specified in the announcement:

(i) A fishing vessel of the United States over 24 meters in length may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(ii) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. In the case of a vessel that has declared to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, the 14-day limit is waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the prohibitions, as recorded by the NMFS observer on board the vessel.

(iii) Bigeye tuna caught by longline gear used on a vessel of the United States over 24 meters in length in the

Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(iv) A fishing vessel of the United States over 24 meters in length may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (b)(3) of this section, in which case the provisions of paragraphs (b)(4)(ii) and (b)(4)(iii) of this section still apply.

(v) If a fishing vessel of the United States over 24 meters in length is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such

a manner that it is not readily available for use.

* * * * *

(e) *Bycatch reduction measures.*

(1) Bigeye, skipjack, and yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) using purse seine gear must be retained on board and landed, except fish deemed unfit for human consumption for reasons other than size from 0000 hours on January 1, 2010 to 2400 hours on December 31, 2011. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire catch.

* * * * *

(f) *Purse seine closures in the EPO.*

(1) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area from 0000 hours on November 21, 2009, to 2400 hours on January 18, 2010; from 0000 hours on November 18, 2010, to 2400 hours on January 18, 2011; and from 0000 hours on November 7, 2011, to 2400 hours on January 18, 2012, except that a vessel of class size 4 (182 to 272 metric tons carrying capacity) may make one fishing

trip of up to 30 days duration during the specified closure period, provided that the vessel carries an observer of the On-Board Observer Program of the Agreement on the International Dolphin Conservation Program during the entire fishing trip.

(2) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on September 29 to 2400 hours on October 29 in the years 2009, 2010, or 2011 to fish with purse seine gear within the area bounded at the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude.

(3) At all times while a vessel is in a Closed Area established under paragraphs (f)(1) or (f)(2) of this section, the fishing gear of the vessel shall be stowed in a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured.

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