(c) *Certain farm vehicle drivers.* The rules in this part except for § 391.15(e) do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) commercial motor vehicle, as defined in § 390.5. For limited exemptions for farm vehicle drivers of articulated commercial motor vehicles, see § 391.67.

■ 11. Amend § 391.15 by adding a new paragraph (e) to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(e) Disqualification for violation of prohibition of texting while driving a commercial motor vehicle—

(1) *General rule.* A driver who is convicted of violating the prohibition of texting in § 392.80(a) of this chapter is disqualified for the period of time specified in paragraph (e)(2) of this section.

(2) *Duration.* Disqualification for violation of prohibition of texting while driving a commercial motor vehicle—

(i) *Second violation.* A driver is disqualified for 60 days if the driver is convicted of two violations of § 392.80(a) of this chapter in separate incidents during any 3-year period.

(ii) *Third or subsequent violation.* A driver is disqualified for 120 days if the driver is convicted of three or more violations of § 392.80(a) of this chapter in separate incidents during any 3-year period.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 12. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 13902, 31136, 31151, 31502; and 49 CFR 1.73.

■ 13. Amend part 392 by adding a new subpart H to read as follows:

Subpart H—Limiting the Use of Electronic Devices

§ 392.80 Prohibition against texting.

(a) *Prohibition.* No driver shall engage in texting while driving.

(b) *Motor Carriers.* No motor carrier shall allow or require its drivers to engage in texting while driving.

(c) *Definition.* For the purpose of this section only, *driving* means operating a commercial motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver moved the vehicle to the side of, or off, a highway, as defined in 49 CFR 390.5, and halted in a location where the vehicle can safely remain stationary.

(d) *Exceptions.* (1) *School bus operations and vehicles designed or used to transport 9 to 15 passengers, including the driver, not for direct compensation.* The provisions of § 390.3(f)(1) and (6) are not applicable to this section.

(2) *Emergency Use.* Texting while driving is permissible by drivers of a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services.

Issued on: September 17, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–23861 Filed 9–24–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 080228336–0435–02]

RIN 0648–AW09

Implementation of Regional Fishery Management Organizations' Measures Pertaining to Vessels That Engaged in Illegal, Unreported, or Unregulated Fishing Activities

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to implement international conservation and management measures that pertain to vessels that have been identified by any one of several regional fishery management organizations (RFMOs), identified below, as having engaged in illegal, unreported, and unregulated (IUU) fishing activities and added to IUU vessel lists. The United States is a member of, and obligated to implement measures adopted by, the International Commission for the Conservation of Atlantic Tunas (ICCAT), Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), Northwest Atlantic Fisheries Organization (NAFO), Western and Central Pacific Fisheries Commission (WCPFC), Inter-American Tropical Tuna Commission (IATTC), and the Agreement on the International Dolphin Conservation Program (AIDCP). This rule provides the NOAA Assistant Administrator for Fisheries (Assistant Administrator) with authority to restrict entry into any port or place of the United States of, and access to port services by, foreign vessels on the IUU vessel lists of the aforementioned RFMOs. It also gives the Assistant Administrator authority to prohibit such vessels from engaging in commercial transactions, including, but not limited to, landing and transshipping products. Furthermore, the rule prohibits persons and business entities subject to U.S. jurisdiction from providing certain services to, or engaging in commercial transactions with, such vessels.

DATES: Effective October 27, 2010.

ADDRESSES: Copies of supporting documents that were prepared for this final rule, such as the proposed rule, are available via the Federal e-Rulemaking portal, at *http://www.regulations.gov*. These documents are also available from the Trade and Marine Stewardship Division, Office of International Affairs, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mi Ae Kim, Trade and Marine Stewardship Division, Office of International Affairs, NMFS ((phone) 301–713–9090, (fax) 301–713–9106, or (e-mail) *mi.ae.kim@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

On January 11, 2010, NMFS published a proposed rule in the **Federal Register** (75 FR 1324) to address vessels that are on the IUU vessel lists maintained by RFMOs to which the United States is a party. As mentioned in the proposed rule, the effective management of certain marine resources is dependent on compliance with conservation and management measures of RFMOs. The vessels that are included on the IUU vessels lists were identified by RFMOs as having engaged in activities that undermine the effectiveness of conservation and management measures. Examples of such IUU fishing activity include:

- Fishing in an RFMO's management (or convention) area without authorization;
- Failing to record or declare their catches, or making false reports;
- Using prohibited fishing gear in contravention of conservation measures; or
- Transshipping with, or participating in joint operations with, re-supplying, or re-fueling vessels included in IUU vessel lists.

The proposed rule was open for public comment through February 25,

2010. Our evaluation of the comments did not lead to substantial changes between the proposed rule and this final rule.

NMFS is issuing these regulations pursuant to its authority to administer and enforce the statutes that implement the conventions of the following RFMOs: ICCAT, CCAMLR, NAFO, WCPFC, IATTC, and the AIDCP (the AIDCP is not an RFMO per se, but is referred to as such for the purposes of this action). Statutes that authorize rulemaking to implement RFMO conservation and management measures include the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971 *et seq.,* the Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431 *et seq.,* the Northwest Atlantic Fisheries Convention Act of 1995, 16 U.S.C. 5601 *et seq.,* the Western and Central Pacific Fisheries Convention Implementation Act, 16 U.S.C. 6901 *et seq.,* the Tuna Conventions Act of 1950, 16 U.S.C. 951 *et seq.,* and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* These statutes authorize the promulgation of regulations as necessary to carry out the purposes and management measures of each RFMO convention.

These regulations detail the authorities of the Assistant Administrator to take actions, in accordance with the requirements of the appropriate RFMO conservation measure, against foreign vessels that are included on the final IUU vessel lists of the above RFMOs. The regulations provide the Assistant Administrator some discretion, albeit in accordance with the relevant RFMO measures, in determining the appropriate action to take with respect to a listed IUU vessel seeking entry into, or use of, a U.S. port. These regulations also specify the prohibitions applicable to listed IUU vessels, as well as those persons or entities subject to the jurisdiction of the United States who may consider business relationships with listed vessels. NMFS and the NOAA Office of Law Enforcement will cooperate with the U.S. Coast Guard, U.S. Customs and Border Protection, and other State and Federal agencies as appropriate in the implementation of the rule.

Comments and Responses

NMFS received 29 comments electronically and by mail from members of the public, a seafood company, non-profit organizations, the Mid-Atlantic Fishery Management Council, and the Marine Mammal Commission. Several comments expressed strong support for the rule and encouraged NMFS to publish the final rule as soon as possible.

Key issues and suggestions in the comments are summarized below, each followed by our responses.

Comment 1: Several commenters suggested that we impose additional penalties on foreign listed IUU vessels. Suggestions included, but were not limited to, charging fines, detaining the captain until fines are paid, and impounding or confiscating vessels.

Response: The suggested penalties are outside the scope of this rulemaking. This rule implements conservation and management measures pertaining to IUU vessels for those RFMOs of which the United States is a member (including ICCAT, CCAMLR, NAFO, WCPFC, IATTC, and AIDCP). These RFMOs obligate the United States to restrict port entry or access by listed IUU vessels and limit commercial transactions between U.S. persons and listed IUU vessels. Violations of these regulations will be enforced under the authority of the relevant RFMO convention implementing statute.

Comment 2: A commenter recommended that NMFS take advantage of this opportunity to implement measures to combat IUU fishing as envisioned by the recently concluded Agreement on Port State Measures to Prevent, Deter, and Eliminate IUU Fishing (PSMA), adopted by the Food and Agriculture Organization of the United Nations on November 22, 2009. The commenter also suggested that the United States apply the PSMA provisionally, as foreseen in Article 32, or incorporate some essential measures of the PSMA, such as (a) denying port entry or access to any vessel listed on any RFMO IUU vessel list, regardless of whether the United States is a member of the RFMO; (b) prohibiting port entry to all IUU vessels, in accordance with procedures established in Part 2 of the PSMA, regardless of whether the vessel is listed on an RFMO IUU vessel list; (c) denying port services whenever there is denial of other forms of port use, such as landing, transshipping, packaging, and processing of fish; and (d) transmitting inspection results and other information to relevant States and international organizations.

Response: The measures included in the PSMA are beyond the scope of this rulemaking, which implements only the conservation and management measures of RFMOs to which the United States is a party. The United States, as a signatory to the PSMA, supports the agreement and took it into consideration when developing this final rule. However, any efforts to implement PSMA provisions that go beyond the requirements of applicable RFMO IUU measures would be through separate processes.

Comment 3: A commenter suggested that we establish a common rule to be applied to all vessels listed in the different IUU vessel lists, selecting the actions that are most effective in combating IUU fishing and mirroring Parts 2 and 3 of the PSMA, or at least the measures of the PSMA noted under Comment 2.

Response: NMFS considered applying a common rule to all vessels listed in the different IUU vessel lists, as this approach would have simplified implementation and enforcement procedures. However, NMFS determined that the best course of action was to promulgate a rule that would allow for a case-by-case treatment of listed IUU vessels, in accordance with the relevant conservation and management measure. This approach ensures that actions taken against IUU vessels pursuant to this rule are consistent with the specific obligations under the applicable RFMO conservation and management measure, which differ to some extent from RFMO to RFMO. With regard to applying measures of the PSMA to all IUU vessels, regardless of whether the United States is a member of the RFMO that listed the vessel, please refer to the response to Comment 2.

Comment 4: A couple of commenters suggested that all listed IUU vessels should be denied port privileges, with limited exceptions for safety, health and welfare or in cases of *force majeure,* regardless of which RFMO conservation and management measure applies.

Response: NMFS agrees that the denial of port privileges should be applied as broadly as possible, but given the scope of this rulemaking the actions taken must be supported by the relevant RFMO measure.

Comment 5: A commenter noted that entry of IUU vessels and IUU seafood creates unfair competition with legitimate fishing operations and results in entry of fish and fish products that may not be subject to the scrutiny for freshness, quality, labeling, bycatch, and other standards. The commenter suggested all IUU vessels and seafood need to be prohibited from entering the United States.

Response: A listed IUU vessel may or may not be denied entry, depending on the requirements of the relevant RFMO conservation and management measure. For those vessels that are allowed to enter a port or place of the United States, they will be subject to inspection and also prohibited from engaging in

commercial activities such as landing and transshipment and obtaining port services such as refueling and resupplying except in cases of *force majeure* or where such services are necessary for the health and safety of the crew. As explained in the response to Comment 2, denial of entry to all IUU vessels, including those on lists of RFMOs to which the United States is not a party, is beyond the scope of this rulemaking. A prohibition on importing all seafood that is caught during IUU fishing is also beyond the scope of this rulemaking.

Comment 6: Two commenters noted that because the proposed rule addresses only vessels as point of origin for IUU fishing, NMFS overlooks land-based IUU fishing. For example, the prohibitions on landings and transshipment do not prevent or deter the importation of salmon that is illegally harvested without the use of vessels. The commenters acknowledged this may be beyond the reach of this rulemaking, but would like to see NMFS consider such prohibitions in subsequent actions.

Response: The comment has been noted. As recognized by the commenters, this suggestion is beyond the scope of this rulemaking.

Comment 7: Two commenters noted that the North Pacific Anadromous Fish Commission (NPAFC) could identify vessels engaged in IUU fishing within the Convention Area and include those vessels on a list. They believe that NMFS should also include the NPAFC as one of the RFMOs considered under this regulation.

Response: Unlike the RFMOs that are the subject of this rulemaking, NPAFC does not have a conservation and management measure whereby it compiles a list of IUU vessels and requires members to implement actions against those vessels. NPAFC prohibits direct fishing for anadromous fish (chum, coho, pink, sockeye, chinook, and cherry salmon and steelhead trout) by NPAFC members within its Convention Area. Enforcement of this prohibition, and other provisions of the Convention, is carried out through patrols coordinated among the parties. Such patrolling can and has resulted in vessels being apprehended. While the list of apprehended vessels is available on the NPAFC Web site, members are not required to take any particular actions with respect to denying these vessels port entry or access. Therefore, applying the provisions of this rule to such vessels would go beyond the scope of this rulemaking.

Comment 8: Two commenters suggested transport vessels suspected of receiving transshipments of fish or fish products from another vessel on a relevant IUU vessel list be equally subject to the proposed regulation.

Response: Applying the provisions of this rule to vessels that are only suspected of receiving transshipments of fish from an IUU vessel, but that have not been included on an IUU vessel list of an RFMO to which we are a party would go beyond the scope of this rulemaking. In addition, denying port entry to such vessels would preclude the United States from inspection and/or follow-up investigation that could lead to confirmation of any suspected IUU activity and, where warranted, further enforcement action. This regulation does make it unlawful for any person subject to U.S. jurisdiction to engage in commercial transactions (including transshipment and transportation of product) with an IUU vessel. A violation of this regulation could lead to prosecution under one or more of the statutes that authorize this rulemaking, namely, the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971 *et seq.,* the Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431 *et seq.,* the Northwest Atlantic Fisheries Convention Act of 1995, 16 U.S.C. 5601 *et seq.,* the Western and Central Pacific Fisheries Convention Implementation Act, 16 U.S.C. 6901 *et seq.,* the Tuna Conventions Act of 1950, 16 U.S.C. 951 *et seq.,* and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*

Comment 9: Two commenters stated that the rule should apply to vessels on IUU vessel lists compiled by sovereign nations for violations within their EEZs. The commenters suggested the definition of "listed IUU vessel" be expanded to include such lists. Similarly, another commenter would like to see the United States support the creation of national and regional databases and blacklists in IUU fishing affected regions (for example, West Africa) that are then reflected in a list of IUU vessels maintained by NOAA.

Response: Applying the rule to vessels on IUU lists of other nations is beyond the scope of this rulemaking. A vessel on an individual nation's IUU list could get incorporated into RFMO IUU vessel lists in accordance with the procedures of the RFMO. The United States supports and participates in the listing of vessels within the relevant RFMOs, and may support the listing of any vessel that engages in IUU fishing after full consideration of the evidence that supports the listing.

Comment 10: Two commenters noted that the U.S. territories in the South Pacific could provide substantial conduits for product of IUU fishing, particularly tuna, to enter the United States and world market, as the Nicholson Act does not prevent offloading of certain fish products in those areas. They sought clarification that all U.S. territories are subject to the provisions of the rule, and that the regulations would not concern primarily transport vessels included on the IUU vessel lists as it is stated in column 3, page1325 of the proposed rule.

Response: This rule applies in all U.S. territories, including American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, and to all vessels that may be included on an RFMO's IUU vessel list, including fishing, transport, and support vessels.

Comment 11: A commenter suggested that NMFS provide details on the procedure and criteria to be used by the Assistant Administrator in determining which actions to take against an IUU vessel. For example, the commenter sought clarification on how the Assistant Administrator would receive information about an IUU vessel prior to its entry and, if an IUU vessel is on two lists, explain which set of rules would prevail. Another commenter also asked for clarification of the specific steps to be taken during the interagency consultative process to determine whether to deny port entry or access to, or commercial transactions with, a specific vessel, noting that the decisions made by the Assistant Administrator must be transparent. Similarly, two other commenters suggested that the regulations clarify interagency cooperation to ensure that agencies share information effectively.

Response: NMFS agrees that the Assistant Administrator's actions taken pursuant to these regulations should be as transparent as possible. Many of the specific steps to be taken during the process to determine the appropriate course of action are already in place. As described in the preamble to the proposed rule, most foreign-flagged vessels are required to submit a notice of arrival to the U.S. Coast Guard when entering a port or place of the United States in accordance with 33 CFR 160.212(a)(3). The vessels are required to report electronically the vessel name, voyage, cargo, crewmembers, and other information to the U.S. Coast Guard's National Vessel Movement Center (NVMC) at least 96 hours before entering the port or place of destination. When a listed IUU vessel submits a notice of arrival, the Coast Guard would notify NMFS and the Department of State of the impending arrival. Such notification would trigger interagency consultations, among, at a minimum,

the Department of State, U.S. Coast Guard, and NMFS to determine the most appropriate course of action in light of RFMO requirements. The primary factor in determining the course of action is the relevant conservation and management measure.

The actions required by the RFMO conservation and management measures are similar to each other, but where the measures differ, or where an IUU vessel is on more than one IUU vessel list, the Assistant Administrator will determine the appropriate course of action, in consultation with other agencies. Maintaining flexibility, on a case-by-case basis, will be particularly important in these situations.

The interagency consultation will follow the existing Maritime Operational Threat Response (MOTR) process, which was established to address the full spectrum of maritime security and defense threats to, or directed against, the United States and its interests globally. According to May 5, 2009, testimony of the U.S. Coast Guard before Congress, the MOTR Plan includes an integrated network of national-level maritime command centers. The Plan sets forth lead and supporting Federal agency roles and responsibilities for MOTR based on existing law, desired U.S. Government outcome, greatest potential magnitude of the threat, the response capabilities required, asset availability, and authority to act. The MOTR Plan also establishes clear operational coordination requirements and sets forth protocols for interagency coordination, consultation, and assessment. The MOTR Plan has been employed in over 600 maritime cases since 2005. These cases include drug interdiction, migrant interdiction, fisheries violations, violence at sea, bomb threats, radiation/nuclear alarm resolution, piracy, and complex multi-disciplinary events.

Comment 12: Two commenters tentatively agreed that the Assistant Administrator should be allowed some discretion to take action against IUU vessels in accordance with the relevant RFMO measure, but sought transparency in the decisions made on port entry, subject to confidentiality concerns for national security or on-going investigation. They believe a publicly available report detailing the action taken, including the rationale, should be produced. Another commenter suggested that NMFS provide notice and explanations for actions taken pursuant to these regulations, whether access is denied or not.

Response: NMFS agrees that the Assistant Administrator's actions taken pursuant to these regulations should be as transparent as possible. Information on the actions taken against listed IUU vessels will be made public, subject to confidentiality of investigations and enforcement actions. Some enforcement actions carried out by NOAA and the U.S. Coast Guard are already publicized through press releases. NMFS will develop a mechanism for reporting information about the actions taken pursuant to this rule.

Comment 13: A commenter noted that the RFMOs adopted their IUU vessel list measures several years ago. Current law does not bar foreign, IUU vessels from port entry for purposes other than landing, such as maintenance, provisioning, and loading of fish or fish products. The commenter urged NMFS to adopt the final rule as soon as possible.

Response: NMFS agrees with the commenter and has undertaken this rulemaking to implement US obligations with respect to the conservation and management measures relating to RFMO IUU vessel lists.

Comment 14: A commenter encouraged NMFS to undertake a concerted effort to gather information and evidence of IUU fishing activities, and suggested that NMFS may be performing this activity already while implementing the identification and certification procedures under the High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826d *et seq.* (Moratorium Protection Act), as amended by the international provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. Increased monitoring, information gathering, and enforcement will improve the implementation of the RFMOs' IUU measures domestically and internationally.

Response: NMFS routinely seeks information and evidence of IUU fishing to carry out its domestic and international enforcement obligations. In addition, NMFS has been gathering information and evidence of IUU fishing activities as a part of its implementation of the identification procedures under the Moratorium Protection Act. NMFS also seeks and gathers information, where possible, on changes in vessel names and flags. Such vessel information is critical in implementation of the RFMOs' IUU vessel list measures.

Comment 15: A commenter suggested that NMFS consider not only integrating the measures under the various RFMOs, but also the identification and certification procedures under the Moratorium Protection Act. Although the latter requires identification of nations engaged in IUU fishing occurring only in the preceding two years, and RFMO vessel lists are not necessarily so time constrained, eventually there may be overlap between the vessel lists and the NMFS identification efforts. The proposed rule should clarify the potential overlap of this rule and NMFS actions under domestic law.

Response: The Moratorium Protection Act requires the establishment of procedures to certify whether nations identified in a biennial report to Congress are taking appropriate corrective actions to address IUU fishing or bycatch of protected living marine resources by fishing vessels of that nation. NMFS is developing a rule to establish these procedures, hereinafter referred to as the "identification and certification procedures" rule. Under the Moratorium Protection Act, NMFS is required to identify nations whose fishing vessels are engaged, or that have been engaged at any point during the preceding two calendar years, in IUU fishing. NMFS is also required to identify nations whose fishing vessels are engaged, or that have been engaged during the preceding calendar year, in fishing activities either in waters beyond any national jurisdiction that result in the bycatch of a protected living marine resource, or beyond the U.S. EEZ that result in bycatch of a protected living marine resource shared by the United States. Once nations have been identified, there is a notification and consultation process. Subsequent to these processes, the United States will certify whether the government of an identified nation has provided evidence that corrective action has been taken with respect to the activities identified in the report to Congress. The absence of sufficient steps by an identified nation to address IUU fishing and/or bycatch of protected living marine resources may lead to prohibitions on the importation of certain fisheries products into the United States from that nation, the denial of port privileges for vessels of that nation, and/or other measures. On January 14, 2009, NMFS published a proposed identification and certification procedures rule, and solicited public comment through May 14, 2009 (74 FR 2019).

The rule for identification and certification procedures and this rule complement each other to address IUU fishing. The identification and certification procedures rule, developed pursuant to the Moratorium Protection Act, requires action on a nation-by-

nation basis, while this rule addresses individual vessels. The identification and certification procedures rule encourages changes in a nation's oversight of its IUU vessels, and this rule triggers actions with regard to individual IUU vessels. Finally, the identification and certification procedures operate on a biennial basis, but IUU vessel lists can change annually or more frequently and actions regarding IUU vessels may be needed with greater frequency.

It is possible that the IUU activities of a vessel that is on an IUU vessel list of an RFMO could form the basis of identification of a particular nation. This would occur if the IUU activities occurred within the two years prior to the identification of the nation.

Comment 16: A commenter believes that it is vital that NOAA establish, maintain, and publish through a centrally-located point or Web site a master list of vessels that are prohibited from entering into the United States and other cooperating countries. In this manner companies may check the list and not contract with these vessel owners.

Response: The Web site for NMFS' Office of International Affairs (*http://www.nmfs.noaa.gov/ia*) provides links to each of the RFMOs' IUU vessel lists. Each RFMO updates their lists as necessary. As the United States is just one of the members of the relevant RFMOs that participate in the adoption of the IUU vessel lists, the publication of the lists, and any changes thereto, is the responsibility of the RFMO. The Web page also includes the IUU vessel lists of RFMOs to which the United States not a party. Although this regulation does not apply to vessels on these other lists, U.S. companies should be aware of them.

Comment 17: A commenter believes the use of "may" instead of "shall" removes the mandatory nature of the measures and, as a result, does not adequately comply with the language of the conservation and management measures established by the relevant RFMOs.

Response: As a member of the relevant RFMOs, the United States has an obligation to implement the measures adopted by the RFMOs. The conservation and management measures pertaining to IUU vessel lists differ somewhat from RFMO to RFMO. For example, the ICCAT measure calls for prohibiting vessels on their IUU vessel lists from entering port, except in cases of *force majeure,* whereas IATTC and WCPFC measures do not call for denial of port entry, but obligate their members to ensure that listed vessels that voluntarily enter ports are not authorized to land or transship. Thus, the required action will depend on the vessel and the conservation and management measures that led to its inclusion on an IUU vessel list. The use of the word "may" will not result in no action being taken, but rather provides for implementation of the measure relevant to the vessel in question.

Comment 18: A commenter suggested changing the expression "illegal, unregulated, and unreported fishing" to "illegal, unreported, and unregulated."

Response: NMFS agrees and made the change.

Classification

NMFS Assistant Administrator has determined that this action is consistent with the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*), Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2431 *et seq.*), Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 *et seq.*), Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901–6910), Tuna Conventions Act of 1950 (16 U.S.C. 951–962), the Marine Mammal Protection Act (11 Stat. 1122; 16 U.S.C. 1361 *et seq.*), and other applicable laws.

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

As required under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601, *et seq.*), a final regulatory flexibility analysis (FRFA) was prepared for this final rule implementing international conservation and management measures of ICCAT, CCAMLR, NAFO, WCPFC, IATTC, and AIDCP. The measures relate to foreign vessels that have been identified by these bodies as having engaged in illegal, unreported, and unregulated (IUU) fishing activities and included on their respective IUU vessel lists.

The purpose of the RFA is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA does not contain any decision criteria; instead, the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of regulatory actions (and alternatives) and to ensure that the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the action and applicable statutes.

The final rule will allow the NMFS Assistant Administrator to deny a foreign, listed IUU vessel entry into a port or place of the United States or access to port services, in accordance with applicable provisions of RFMO conservation and management measures. The final rule also allows the Assistant Administrator, in accordance with applicable provisions of RFMO conservation and management measures, to prohibit certain transactions, such as transshipping with, processing fish using, or supplying provisions or fuel to such IUU vessels. The rule includes several prohibitions for persons subject to the jurisdiction of the United States that complement the above restrictions for such vessels. The final rule would make it unlawful for any person subject to U.S. jurisdiction to engage in commercial transactions with a listed IUU vessel, including, but not limited to:

- Transshipment with a listed IUU vessel;
- Processing fish harvested or landed by a listed IUU vessel or processing fish using a listed IUU vessel;
- Joint fishing operations with a listed IUU vessel;
- Providing supplies, fuel, crew, or otherwise supporting a listed IUU vessel; or
- Chartering or entering in a chartering arrangement with a listed IUU vessel.

This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) published in the **Federal Register** on January 11, 2010 (75 FR 1324). The IRFA is not repeated here in its entirety. The need for and objectives of the rule are explained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the proposed rule and this final rule.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

NMFS did not receive any public comments on the IRFA and did not receive any comments on the rule generally that would warrant a change in the FRFA analysis.

Description and Estimate of the Number of Small Entities to Which the Final Rule Will Apply

The following is the analysis of the economic impacts on small entities that are anticipated as a result of this final rule. The final rule will apply to U.S. entities that engage or could engage in business transactions with vessels that are on the final IUU vessel lists adopted or approved by ICCAT, CCAMLR, NAFO, WCPFC, IATTC, and AIDCP. In particular, the regulations would apply to U.S. vessels or other entities that could: (1) Engage in transshipment with a listed IUU vessel; (2) process fish harvested or landed by a listed IUU vessel or process fish using a listed IUU vessel; (3) participate in joint fishing operations with a listed IUU vessel; (4) provide supplies, fuel, crew, or otherwise support a listed IUU vessel; or (5) charter or enter in a chartering arrangement with a listed IUU vessel. In addition to vessels, businesses located in or near ports could also be affected. It is not known if, or the extent to which, U.S. entities currently conduct these activities with listed IUU vessels. NMFS has, however, advised the public through NMFS' outreach materials to consult IUU vessel lists when making commercial arrangements, as there are potential negative ramifications of conducting business with a listed IUU vessel because the United States and other countries are obligated to carry out RFMO conservation and management measures targeting IUU vessels, such as port entry restrictions. The warning was first issued in May of 2007, and it has been updated regularly since (*see http://www.nmfs.noaa.gov/ia/challenges/iuu.htm*).

When this final rule goes into effect, U.S. entities will not be able to legally conduct business with vessels that are on IUU vessel lists, subject to certain exceptions. However, only a few of these establishments are expected to lose such opportunities as a result of this final rule. The potential for transactions between these entities and IUU vessels is extremely limited, due to the few arrival attempts made by listed IUU vessels into U.S. ports.

In the aggregate, approximately 90 vessels are listed as IUU vessels by IATTC, ICCAT, CCAMLR, NAFO, WCPFC, and AIDCP. To date, none of these vessels are flagged to the United States. According to information recently compiled by Pew Environment Group, about 87 percent of all the vessels listed by the six RFMOs to which the United States is a party are fishing vessels (*http://www.portstateperformance.org*). Foreign, listed IUU vessels rarely arrive in U.S. ports because foreign fishing vessels are generally prohibited by the Nicholson Act (46 U.S.C. 55114) from landing fish in most U.S. ports. As a result, U.S. entities do not normally conduct business with these vessels.

U.S. Coast Guard and other data show that only two listed IUU vessels have ever come into U.S. ports. The lack of port visits by listed IUU vessels indicates an extremely low likelihood of transactions between U.S. entities and listed IUU vessels. The U.S. Coast Guard holds records of notices of arrivals and departures from commercial vessels. The records include vessels measuring 300 gross tons or more, except for those foreign vessels entering any port or place in the Seventh Coast Guard District (includes South Carolina, most of Georgia and Florida, Puerto Rico, and the U.S. Virgin Islands) where all vessels, irrespective of their capacity, must provide notices. The requirements for notices of arrival are at 33 CFR Part 160, Subpart C. As all of the non-fishing vessels that are currently listed on the RFMO IUU vessel lists are over 300 gross tons (Pew Environment Group, unpublished data), and most arrivals by these vessels would be contained in the U.S. Coast Guard database.

The U.S. Coast Guard database shows that two refrigerated transport (reefer) vessels arrived in U.S. ports, both before being included on an IUU vessel list and afterwards. U.S. Coast Guard's data show that in 2005 one of these reefer vessels submitted three of the 128,033 arrival notices (from 11,493 commercial vessels) received that year. In 2006, the two reefer vessels submitted three of the 138,829 arrival notices (from 12,039 commercial vessels) received. In 2007, both reefer vessels were placed on IUU vessels lists. That year, the two vessels submitted four of the 135,499 arrival notices (from 12,148 commercial vessels). In each of these three years, the notices by these two vessels were a negligible portion of the total submitted to U.S. Coast Guard. No IUU vessels are known to have visited a U.S. port in 2008 or 2009.

With regard to the possible economic impacts of this action on small entities, NMFS anticipates that U.S. entities will not be significantly affected by this action because listed IUU vessels comprise a negligible proportion of the total number of vessel visits to U.S. ports. Therefore, any U.S. entity that might be affected by this rule should be able to offset any lost business opportunities by conducting business with non-listed vessels and thus not be significantly affected by the prohibitions in the final rule.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

There are no new reporting or recordkeeping requirements contained in this action.

Significance of the Economic Impacts on Small Entities

NMFS does not expect a substantial number of small entities to be affected by the final rule, because the number of listed IUU vessels is small and their arrival or arrival attempts into the ports or places of the United States are so few in number. Thus, only a handful of potential transactions would be affected as a result of this final rulemaking. For any entities that could be affected, NMFS expects that the final rule would not have a significant economic impact because the number of legal vessels entering the United States far exceeds the number of listed IUU vessels entering the United States.

Description of Significant Alternatives to the Final Rule and Discussion of How the Alternatives Attempt To Minimize Economic Impacts on Small Entities

NMFS analyzed one alternative to the final rule—a no action alternative where NMFS would not promulgate regulations to implement RFMO conservation and management measures pertaining to listed IUU vessels. This alternative to the final rule may demonstrate the least burden or economic impact to small entities. Under the no-action alternative, U.S. entities could attempt to legally interact with IUU vessels. Because other countries have implemented the restrictions required in the RFMO conservation and management measures, such as port entry restrictions or prohibitions on providing fuel or provisions to IUU vessels, listed IUU vessels may be unable to complete certain transactions. For example, a listed vessel may be prohibited from entering their intended port, or their trip may be hindered because they cannot acquire supplies in a timely manner. Thus, a listed IUU vessel that transports a shipment of fish from the United States may not be able to successfully deliver to countries that implemented the relevant RFMO conservation and management measures. In cases where an IUU vessel travels to a country that is not a member of any of the RFMOs, the vessel could likely deliver a fish shipment. However, the financial risks associated with business transactions with listed IUU vessels likely have already caused U.S. entities to avoid such business transactions with listed

IUU vessels, consistent with what is mandated by the final rule.

NMFS did not consider alternatives other than the no action alternative because as a contracting party to the RFMOs specified in the rule, the United States has an obligation to implement conservation measures passed by those RFMOs. In some cases, the United States has flexibility in crafting regulations to implement RFMO conservation measures. For example, conservation measures that allocate quota of harvest from an international fishery to the United States can be implemented through regulations tailored to minimize economic impacts on small entities by equitably allocating the catch quota to different sectors (*e.g.,* commercial and recreational) of the fishery. The IUU vessel list conservation measures do not lend themselves to that type of flexibility. Either the United States implements these measures through this final rule to restrict access to U.S. ports and access to port services by vessels on RFMO IUU vessel lists or, under the no action alternative, the United States would decline to do so.

Promulgating the regulations in the final rule is the preferred alternative because it will clearly show how the United States is fulfilling its obligations to implement the international conservation and management measures pertaining to listed IUU vessels. Moreover, as discussed above, NMFS does not expect the regulations in the final rule to have significant economic impacts on a substantial number of small entities.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian federation, Transportation, Treaties, Wildlife.

Dated: September 22, 2010.

Samuel D. Rauch III,

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

■ For the reasons set forth in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 2431 *et seq.;* 16 U.S.C. 5601 *et seq.;* 16 U.S.C. 6901–6910; 16 U.S.C. 951–962; and 11 Stat. 1122; 16 U.S.C. 1361 *et seq.*

■ 2. Add Subpart P to part 300 to read as follows:

Subpart P—Vessels on IUU Vessel Lists

Sec.
300.300 Purpose and scope.
300.301 Definitions.
300.302 Port entry by foreign, listed IUU vessels.
300.303 Port access by foreign, listed IUU vessels.
300.304 Prohibitions.

Subpart P—Vessels on IUU Vessel Lists

§ 300.300 Purpose and scope.

(a) This subpart implements internationally-adopted measures pertaining to foreign vessels determined to have engaged in illegal, unreported, and unregulated (IUU) fishing and placed on IUU vessel lists of the:

(1) International Commission for the Conservation of Atlantic Tunas (ICCAT),

(2) Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR),

(3) Northwest Atlantic Fisheries Organization (NAFO),

(4) Western and Central Pacific Fisheries Commission (WCPFC),

(5) Inter-American Tropical Tuna Commission (IATTC), and

(6) Parties to the Agreement on the International Dolphin Conservation Program (AIDCP).

(b) For purposes of this subpart, the above organizations are referred to as regional fishery management organizations (RFMOs). Each of these RFMOs adopts or approves an IUU vessel list in accordance with their respective rules and procedures. The lists are publicly available at each RFMO's Web site. The regulations in this subpart apply to all persons subject to the jurisdiction of the United States, wherever they are.

§ 300.301 Definitions.

In addition to the terms defined in § 300.2, the terms used in this subpart have the following meanings.

Landing means to begin to offload fish, or to offload fish from any vessel.

Listed IUU Vessel means a vessel that is included on a final IUU vessel list adopted or approved by an RFMO to which the United States is a party.

Processing means the preparation or packaging of fish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil.

Transshipping means the offloading, unloading, or transferring of fish or fish products from one vessel to another.

§ 300.302 Port entry by foreign, listed IUU vessels.

The Assistant Administrator may, in accordance with applicable provisions of RFMO conservation and management measures, deny a foreign, listed IUU vessel entry to any port or place subject to the jurisdiction of the United States, except in cases of *force majeure.*

§ 300.303 Port access by foreign, listed IUU vessels.

If a foreign, listed IUU vessel is allowed to enter a port or place subject to the jurisdiction of the United States, the Assistant Administrator may, in accordance with applicable provisions of RFMO conservation and management measures, take one or more of the following actions:

(a) Inspect the vessel;

(b) Deny the vessel access to port services, including but not limited to refueling, resupplying, or disembarking or embarking of crew; or

(c) Prohibit the vessel from engaging in commercial transactions including, but not limited to, transshipping or landing product.

§ 300.304 Prohibitions.

(a) It is unlawful for a foreign, listed IUU vessel denied entry under § 300.302 to enter any port or place subject to the jurisdiction of the United States.

(b) It is unlawful for any foreign, listed IUU vessel to obtain port services or engage in commercial transactions, or attempt to obtain such services or engage in such transactions, if such activities have been denied or prohibited under § 300.303(b) and/or § 300.303(c), or if the vessel has been denied entry under § 300.302.

(c) It is unlawful for any person, without prior authorization from the Assistant Administrator, to engage in commercial transactions with listed IUU vessels. Such transactions include, but are not limited to:

(1) Transshipment;

(2) Processing fish harvested or landed by a listed IUU vessel or processing fish using a listed IUU vessel;

(3) Joint fishing operations;

(4) Providing supplies, fuel, crew, or otherwise supporting a listed IUU vessel; or

(5) Chartering or entering in a chartering arrangement with a listed IUU vessel.

(d) The prohibitions listed in § 300.304(c) shall not apply when the Assistant Administrator has authorized a listed IUU vessel to access such port services or engage in such commercial transactions, in accordance with applicable provisions of RFMO

conservation and management measures, including in cases of *force majeure* and where the Assistant Administrator has determined that such services are essential to the safety, health, and welfare of the crew.

[FR Doc. 2010–24196 Filed 9–24–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 080102007–0337–03]

RIN 0648–AW18

Magnuson-Stevens Fishery Conservation and Management Act; Regional Fishery Management Councils; Operations

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

ACTION: Final rule.

SUMMARY: NMFS publishes changes to the regulations that address the operations and administration of the Regional Fishery Management Councils (Councils). The regulatory changes implement the 2006 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that, among other things, establish the Council Coordinating Committee (CCC), require that the Councils' science and statistical committee (SSC) members disclose their financial interests, and provide for training of Council members and staff. Additionally, this final rule clarifies the Council documents that should be available to the public; the restrictions on lobbying; the procedures for Council member nomination, including timing for submission of nominations; and also requires Councils to provide procedures for deeming regulations necessary and or appropriate for implementing fishery management plans and plan amendments. These regulations also set forth additional financial disclosure requirements for Council members, and revise the security assurance procedures for nominees to and members of the Councils. Finally, this rule makes technical and minor corrections to the regulations unrelated to the most recent Magnuson-Stevens Act amendments.

DATES: Effective October 27, 2010.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to Alan Risenhoover, Director, Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910, Fax: 301–713–1175, and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: William Chappell, at 301–713–2337.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published on March 27, 2009 (74 FR 13386), with public comment accepted though July 6, 2009. Several Regional Fishery Management Councils requested that the comment period be extended, and NMFS responded by extending the public comment period to November 2, 2009 (74 FR 31224, June 30, 2009). Subsequently, NMFS published a supplementary rule addressing elements of this action on December 7, 2009 (74 FR64042, December 7, 2009), with a comment period ending January 6, 2010. A detailed description of the statutory and regulatory authority and need for this rule is contained in the preamble of the proposed rules and is not repeated here.

This final rule does not finalize regulations on all the elements of the proposed rules. For those elements not finalized in this action, additional public comment will be sought on the proposed rules, or a new proposed rule may be issued for public comment. Specifically, issues regarding stipends for Scientific and Statistical Committees (SSCs) and Advisory Panels need additional public review and comment. Issues addressing the functions of SSCs have been addressed by a recent rulemaking, i.e., the publication of the final rule on National Standard 1 Guidelines, (74 FR 3178, January 16, 2009), or will be addressed in other actions (i.e. pending National Standard 2 Guidelines (proposed rule published at 74 FR 56724, December 11, 2009).

Comments on the Proposed Rule

NMFS received thirteen written responses from organizations and individuals to a call for comments on a proposed rule published on March 27, 2009 (74 FR 13386). Responses included five letters from fishery management councils, one from an attorney for a fishing industry group, three from environmental non-governmental organizations (ENGOs), a letter from the U.S. Small Business Administration (SBA), and three on-line submissions from individuals.

In response to the supplemental proposed rule (74 FR 64042, December 7, 2009), NMFS received a second letter from one of the fishery management councils and two from ENGOs that had previously commented. A fishing industry association and the Marine Mammal Commission (MMC) also responded to the request for comments.

Comment 1: A letter from an ENGO supported the idea of defining the terms "advisory panel" (AP) and "fishing industry advisory committee" (FIAC) and differentiating the groups from one another. Three Councils commented that the definitions should not distinguish between the types of advisory groups for the purposes of authorizing stipends for one, the APs, but not for the other, the FIACs. They noted that the names given advisory groups and the functions of those groups are not consistent with the proposed rule and vary in usage from Council to Council. Also, one respondent noted that Magnuson-Stevens Act Sec. 302(g)(4) refers to the formation of APs, yet it is not referenced in the proposed definition of advisory panels and asks if this is an oversight.

Response: Under the Magnuson-Stevens Act, the Councils are authorized to establish committees and advisory panels at Sec. 302(g)(1) (SSCs), (g)(2) (APs), and (g)(3) (FIACs) as per separate sections of the statute. Sec 301(g)(4) authorized the Secretary to establish APs for Atlantic highly migratory species. Council practice, however, has made little distinction between APs and FIACs. In addition, what would be considered an AP under Sec. 302(g)(2) is often called a committee, and the terms have been used interchangeably and inconsistently from Council to Council. The 2007 reauthorization of the Magnuson-Stevens Act authorized stipends for APs, but not for FIACs. The proposed rule suggested definitions to aid Councils in distinguishing which Council advisory groups' members would be authorized to receive a stipend. In order to determine their eligibility for stipends and whether they are required to meet the meeting notice requirements of 50 CFR 600.135, these definitions are retained and the Councils are now required to declare under which section in the Magnuson-Stevens Act the organization is organized.

Comment 2: A letter from ENGOs suggested the term "fishing industry advisory committee" be replaced by "community advisory panel" to ensure the definition does not preclude membership by individuals who are not representatives of the fishing industry.