

economic hardship, which would be assessed in terms of the cost that would be incurred to transship or land fish at feasible and allowable locations other than on the high seas, as compared to total operating costs, net revenues, or some other meaningful measure of costs and/or revenues; and (2) the vessel would have to make significant and substantial changes to its historical mode of operation as a result of the prohibition of transshipment on the high seas.

Pursuant to a number of fisheries regulations, NMFS collects data from vessel owners and operators on some transshipment activities. However, the data do not cover all transshipment activities that could be subject to this regulation; they do not identify the locations of transshipments (e.g., with respect to in-port versus at-sea, on the high seas versus in waters under national jurisdiction, and inside versus outside the Convention Area), and the types of data collected differ among the fishing fleets. Accordingly, the available data may not provide complete information on historical transshipment activities by U.S. vessels on the high seas in the Convention Area.

Based on the best available data, NMFS is aware that from 1993–2009 an average of 12 transshipments per year were conducted by the U.S. longline fleets operating in the area of application of the Convention, excluding transshipments involving the receipt of only shark fins from foreign-flagged vessels—an activity that was curtailed after the passage of the Shark Finning Prohibition Act in 2000. It is likely that most of these transshipments took place at sea, but it is unknown how many of these transshipments took place on the high seas. It also appears that these transshipments involved vessels in the Hawaii-based longline fleet and the American Samoa-based longline fleet.

NMFS data indicate that U.S. albacore troll vessels operating in the Convention Area conduct at-sea transshipments. For example, from 1990–2004 an average of 49 transshipments per year were conducted by U.S. albacore troll vessels in the area of application of the Convention. It is likely that all of these transshipments took place on the high seas. The available data indicate that no U.S. albacore troll vessel has transshipped at sea in the Convention Area since 2004.

NMFS has no information on high seas transshipments in the Convention Area for vessels in the pole-and-line, handline, tropical troll, or any other HMS fleets.

NMFS is issuing this advance notice of proposed rulemaking to seek public comment on transshipment activities by U.S. HMS fishing fleets in the Convention Area and the impacts that a prohibition on high seas transshipment would have on fishing operations. NMFS would like information that would help it apply the interim guidelines of CMM 2009–06 to determine whether it would be impracticable for certain fishing vessels to operate without being able to transship on the high seas in the Convention Area. In particular, NMFS would like to receive information and comments from potentially affected entities and others on the following: (1) Transshipment activity that has occurred on the high seas in the Convention Area in the past; (2) transshipment activity that presently takes place on the high seas in the Convention Area; (3) transshipment activity that is likely to take place or is anticipated to take place on the high seas in the Convention Area in the future; (4) changes to fishing patterns and practices that could be caused by a prohibition on high seas transshipment in the Convention Area; and (5) the effects (economic or otherwise) that could be caused by a prohibition on high seas transshipment in the Convention Area.

NMFS will consider the information and comments received in order to determine how best to implement the high seas prohibition provision of CMM 2009–06 and any applicable exceptions.

#### Classification

This advance notice of proposed rulemaking has been determined to be not significant for the purposes of Executive Order 12866.

**Authority:** 16 U.S.C. 6901 *et seq.*

Dated: February 9, 2012.

**Alan D. Risenhoover,**

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

[FR Doc. 2012–3545 Filed 2–14–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 110209128–1694–01]

RIN 0648–BA85

#### International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Transshipping, Bunkering, Reporting, and Purse Seine Discard Requirements

**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 authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to implement requirements for U.S. fishing vessels used for commercial fishing that offload or receive transshipments of highly migratory species (HMS), U.S. fishing vessels used for commercial fishing that provide bunkering or other support services to fishing vessels, and U.S. fishing vessels used for commercial fishing that receive bunkering or engage in other support services, in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). Some of the requirements would also apply to transshipments of fish caught in the area of application of the Convention (Convention Area) and transshipped elsewhere. NMFS also proposes requirements regarding notification of entry into and exit from the “Eastern High Seas Special Management Area” (Eastern SMA) and requirements relating to discards from purse seine fishing vessels. This action is necessary for the United States to implement decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC) and to satisfy its obligations under the Convention, to which it is a Contracting Party.

**DATES:** Comments must be submitted in writing by April 16, 2012.

**ADDRESSES:** Comments on this proposed rule, identified by NOAA–NMFS–2011–0281, the environmental assessment (EA), the regulatory impact review (RIR) prepared for the proposed rule, the Pacific Transshipment Declaration

Form, and the U.S. Purse Seine Discard Form may be sent to either of the following addresses:

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

- *Mail:* Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

*Instructions:* Comments must be submitted to one of the two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are part of the public record and generally will be posted on <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 (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.

An initial regulatory flexibility analysis (IRFA) prepared under the authority of the Regulatory Flexibility Act (RFA) is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

Copies of the EA, RIR, Pacific Transshipment Declaration Form, and U.S. Purse Seine Discard Form prepared for this proposed rule are available from <http://www.regulations.gov> or may be obtained from Michael D. Tosatto, NMFS PIRO (see address above).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Rini Ghosh, NMFS PIRO, 808-944-2273.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

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

**Background on the Convention and the WCPFC**

The Convention Area comprises the majority of the western and central Pacific Ocean (WCPO). A map showing the boundaries of the Convention Area can be found on the WCPFC Web site at: <http://www.wcpfc.int/doc/convention-area-map>. The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS.

As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC. The WCPFC Implementation Act (16 U.S.C. 6901 *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 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 WCPFC. The authority to promulgate regulations has been delegated to NMFS.

This proposed rule would implement provisions adopted by the WCPFC in Conservation and Management Measures (CMMs) 2009-06, 2009-01, 2010-02, and 2009-02. A full discussion of the provisions to be implemented in each CMM is provided below.

**WCPFC Decision Regarding the Regulation of Transshipments in the Convention Area**

At its Sixth Regular Session, in December 2009, the WCPFC adopted CMM 2009-06, "Conservation and Management Measure on the Regulation of Transshipment." The CMM, available with other decisions of the WCPFC at <http://www.wcpfc.int/conservation-and-management-measures>, furthers the objectives of Article 29 of the Convention and includes specific obligations for WCPFC Members, Participating Territories, and Cooperating Non-Members (collectively, CCMs) to regulate transshipment activities in the Convention Area. Among the objectives of the CMM is to establish procedures to obtain and verify data on the quantity and species transhipped in the Convention Area and on the quantity and species caught in the Convention Area and transhipped elsewhere to ensure accurate reporting of catches, so that stock assessments of HMS include improved data.

CMM 2009-06 is premised on the recognition that unregulated and unreported transshipment of catches of HMS at sea contributes to inaccurate reporting of the catches of such stocks, which contributes to illegal, unreported, and unregulated (IUU) fishing activities. The term transshipment, as specified in the Convention, means the unloading of all or any fish on board a fishing vessel to another fishing vessel either at sea or in port. Provisions of the CMM generally apply to vessel owners and operators that transship HMS covered by the Convention in the Convention Area. Vessel owners and operators undertaking these transshipments must comply with provisions for observer coverage, notice and reporting requirements, and provisions regarding the types of vessels with which transshipments may be conducted. Vessel owners and operators conducting transshipments outside the Convention Area of HMS caught in the Convention Area must also comply with notice and reporting provisions. No provisions of the CMM apply if the fish are both caught and transhipped in archipelagic waters or territorial seas.

The CMM includes provisions that obligate CCMs to do the following: (1) For transshipments of HMS in the Convention Area or HMS caught in the Convention Area, require owners and operators of vessels that offload or receive transshipments, at sea or in port, to complete a transshipment report including specific information detailing the transshipment and the products transhipped; if the transshipment takes place on the high seas or is an emergency transshipment that would otherwise be prohibited, the report must be submitted to the WCPFC within 15 days of the transshipment; (2) require that a notice be submitted to the WCPFC containing specific information in the case of an emergency transshipment of HMS in the Convention Area or HMS caught in the Convention Area that would otherwise be prohibited within 12 hours of the completion of the transshipment by means of a device that can both send and receive data (e.g., fax or email); (3) require that a notice be submitted to the WCPFC containing specific information at least 36 hours prior to each transshipment on the high seas in the Convention Area or of fish caught in the Convention Area and transhipped on the high seas elsewhere by means of a device that can both send and receive data (e.g., fax or email); (4) require that observers be carried on vessels to monitor transshipments at sea in the Convention Area; and (5) prohibit vessels from transshipping to or from a

vessel flagged to a non-CCM in the Convention Area unless that vessel has received specified forms of authorization, such as being listed on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels (Interim Register) or being specifically licensed to fish in the exclusive economic zone (EEZ) of a CCM in accordance with a decision of the WCPFC.

Under the Convention, CCMs are obligated, with limited exceptions, to prohibit transshipments at sea involving purse seine vessels in the Convention Area. NMFS has implemented this prohibition (see 50 CFR 300.216(b)). CMM 2009–06 also requires CCMs to prohibit transshipments at sea involving purse seine vessels of fish caught in the Convention Area but transshipped outside of the Convention Area. However, purse seine vessels would continue to be able to transship in port.

CMM 2009–06 also contains a provision obligating CCMs to prohibit vessels (other than purse seine vessels) flying their flags from transshipping on the high seas in the Convention Area, subject to certain considerations. NMFS has prepared an advance notice of proposed rulemaking to solicit public comments regarding this provision of CMM 2009–06 (see NOAA–NMFS–2012–0001 at [www.regulations.gov](http://www.regulations.gov)).

#### **WCPFC Decision Regarding Carrier and Bunker Vessels**

At its Sixth Regular Session, in December 2009, the WCPFC adopted

CMM 2009–01, “WCPFC Record of Fishing Vessels and Authorization to Fish.” This CMM revised CMM 2004–01, and specifically established the Interim Register, which includes all non-CCM carrier and bunker vessels that are authorized by the Commission to be used in the Convention Area for transshipping, bunkering, or other supply activities. CMM 2009–01 includes a specific provision obligating WCPFC Members and Cooperating Non-Members to prohibit their fishing vessels from conducting transshipping and bunkering or other support activities in the Convention Area with another vessel unless that vessel is: (1) Flagged to WCPFC Members or Cooperating Non-Members; (2) on the Interim Register; or (3) operated under charter, lease, or similar mechanisms as an integral part of the fishery of a CCM, in accordance with relevant WCPFC provisions. This provision is similar to the provision in CMM 2009–06 obligating CCMs to prohibit vessels from transshipping to or from a vessel flagged to a non-CCM unless that vessel has received specific authorization, such as a non-CCM carrier vessel that is on the Interim Register.

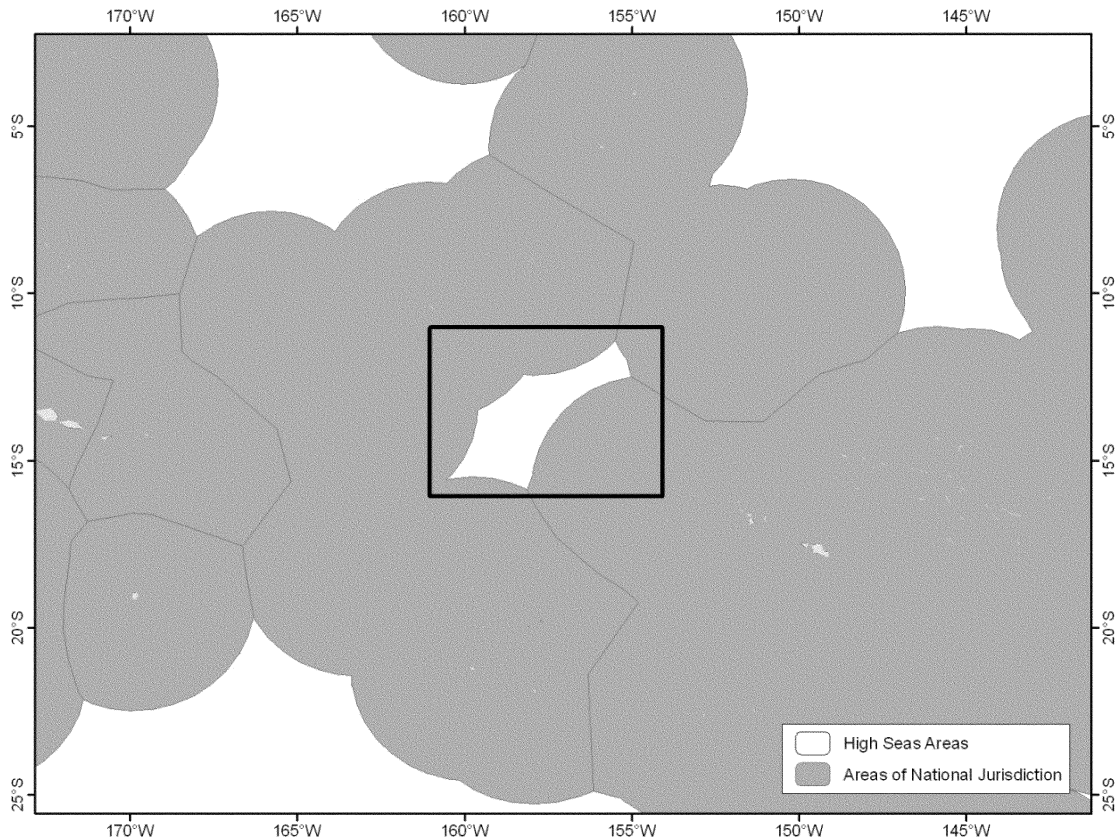
#### **WCPFC Decision Regarding Entry and Exit Notification for the Eastern SMA**

At its Seventh Regular Session, in December 2010, the WCPFC adopted CMM 2010–02, “Conservation and Management Measure for the Eastern High-Seas Pocket Special Management

Area.” This measure seeks to reduce IUU fishing and applies to the area of the high seas bounded by the EEZs of the Cook Islands to the north and west, French Polynesia to the east, and Kiribati to the northeast. The measure obligates CCMs to require their vessels to submit reports with specific information, including catch data, at least six hours prior to entry and no later than six hours prior to exiting this area of the high seas.

CMM 2010–02 also includes a provision requiring CCMs to encourage their vessels operating in the Eastern SMA to report sightings of any vessel to the WCPFC Secretariat, and provide specific information to the WCPFC Secretariat for each sighting (date, time, position, bearing, markings, speed, and vessel type). Because of the limited presence of U.S. vessels operating in the Eastern SMA (see the EA) and the non-obligatory nature of this provision, this proposed rule would not implement this provision of CMM 2010–02. The map in Figure 1 shows the Eastern SMA as the high seas area within the rectangle bounded by the bold black lines.

Figure 1. Eastern SMA. Areas of high seas are indicated in white; areas of claimed national jurisdiction, including territorial seas, archipelagic waters, and EEZs, are indicated in dark shading. The Eastern SMA is the high seas area (in white) within the rectangle bounded by the bold black lines. This map displays indicative maritime boundaries only.



### WCPFC Decision on Discards From Purse Seine Vessels

At its Sixth Regular Session, in December 2009, the WCPFC adopted CMM 2009-02, "Conservation and Management Measure on the Application of High Seas Fish Aggregating Device (FAD) Closures and Catch Retention." The provisions in CMM 2009-02 modify or supplement the provisions in CMM 2008-01, "Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean," for FAD prohibition periods and catch retention requirements for purse seine fishing vessels, including specific requirements for reporting discards of fish. Prior to the adoption of CMM 2009-02, NMFS issued regulations implementing the requirements for the FAD prohibition periods and catch retention specified in CMM 2008-01. Those regulations are set forth at 50 CFR 300.223. NMFS has determined that the regulations implementing the FAD prohibition periods and catch retention requirements under CMM 2008-01 are consistent with the related provisions of CMM 2009-02. Therefore, no additional steps need to be taken at this time to implement these provisions, except that NMFS proposes to remove the termination date (December 31, 2012)

applicable to the current catch retention provision. In addition, CMM 2009-02 also contains new reporting requirements for discards of fish from purse seine vessels, which would be implemented under this rulemaking. The reporting provisions obligate CCMs to require owners and operators of vessels to ensure the submission of a report to the Commission containing specific information regarding discards no later than 48 hours after any discard at sea of fish. The provisions also obligate CCMs to require that a hard copy of the information be provided to the WCPFC Observer on board the vessel.

### Net Sharing Restrictions

This proposed rule also would implement restrictions regarding "net sharing" (i.e., the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one vessel to another fishing vessel) for U.S. purse seine vessels fishing in the Convention Area. The regulations at 50 CFR 300.223(d) implementing the catch retention requirements of CMM 2008-01 require U.S. purse seine fishing vessels to retain all catch of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) unless: (1) The fish are unfit for human consumption;

(2) there is insufficient well space to accommodate all the fish captured in a given set, provided that no additional sets are made during the trip; or (3) serious malfunction of equipment occurs. In addition, the regulations at 50 CFR 300.216 prohibit purse seine vessels from conducting transshipments at sea in the Convention Area. However, on occasion a vessel will have insufficient well space to accommodate all the fish caught in a set.

NMFS believes that in such circumstances, it would be appropriate to allow the vessel to transfer the excess fish in the net to another vessel for the purpose of reducing discards. NMFS' proposal is consistent with CMM 2008-01, which states that "excess fish taken in the last set may be transferred to and retained on board another purse seine vessel provided this is not prohibited under applicable national law."

Thus, the proposed rule would exclude net sharing activities from the definition of transshipment (which for purse seine vessels is generally prohibited at sea). However, a purse seine vessel that transfers fish through net sharing would be prohibited from making any additional purse seine sets during the remainder of its fishing trip.

Under the proposed rule, U.S. purse seine vessels would be prohibited from net sharing with the exception that they

would be allowed to conduct limited net sharing, as described above, on the final set of a trip with other U.S. purse seine vessels. However, since NMFS has limited ability to enforce a last-set requirement for foreign vessels, the proposed rule would prohibit U.S. purse seine vessels from conducting any net sharing with foreign-flagged vessels.

#### **Existing Regulations Governing Transshipment Activities in the Convention Area**

Certain vessel owners and operators that would be subject to this proposed rule are currently subject to regulations regarding transshipments, specifically on reporting transshipment activities. None of the requirements under the proposed rule would conflict with those regulations. However, there would be some overlap with the current reporting requirements. These overlaps are described below. Aside from the 15-day requirement for high seas and emergency transshipments, as described above, CMM 2009–06 does not provide specific requirements for when the transshipment report must be submitted. Thus, the proposed rule would require vessel owners and operators who are subject to other existing transshipment reporting requirements to submit the information in the transshipment report on the same schedule as those requirements for all transshipments other than emergencies or those that occur on the high seas.

#### *Requirements for Vessels Licensed Under the South Pacific Tuna Act of 1988*

The South Pacific Tuna Act, (SPTA; 16 U.S.C. 973–973r), implements the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty), which requires the submission of a transshipment logsheet form. Purse seine vessels licensed under the SPTA implementing regulations must complete a transshipment logsheet form for each transshipment. The logsheet form, which can be obtained from the NMFS Pacific Islands Regional Administrator, must be accompanied by a report of the size breakdown of the catch as determined by the receiver of the fish, also known as a “final outturn” report. The logsheet form and final outturn report must be submitted to the NMFS Pacific Islands Regional Administrator within two days of the completion of the transshipment and to the Treaty Administrator (currently the Pacific Islands Forum Fisheries Agency (FFA)) within fourteen days of the transshipment (50 CFR 300.34(c)(2)).

Owners and operators of vessels licensed under the SPTA that are involved in transshipments of HMS in the Convention Area or in transshipments of HMS caught in the Convention Area and transshipped elsewhere, would be subject to the new reporting requirements in the proposed revised section 300.218 of title 50 of the Code of Federal Regulations set forth in this proposed rule.

#### *Requirements for Vessels Receiving Transshipments of Longline-Caught Fish*

Under current regulations, owners and operators of vessels registered for use as receiving vessels used to land or transship western Pacific pelagic management unit species (MUS) (i.e., species managed under the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region) that were harvested using longline gear shoreward of the outer boundary of the U.S. EEZ around American Samoa, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, or the Pacific remote island areas (PRIA; these include Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll), must submit a transshipment logbook containing report forms available from the NMFS Pacific Islands Regional Administrator. All information specified on the form must be recorded on the form within 24 hours of the transshipment. Each form must be signed and dated by the receiving vessel operator. The original logbook form for each day of transshipment activity must be submitted to the NMFS Pacific Islands Regional Administrator within 72 hours of each landing of western Pacific pelagic MUS (50 CFR 665.14(c) and 50 CFR 665.801(e)).

NMFS would replace the transshipment logbook form currently in use with the proposed Pacific Transshipment Declaration Form. Thus, owners and operators of vessels receiving transshipments of longline-caught fish in the U.S. EEZ around American Samoa, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, or PRIA would be required to submit only one form for a given transshipment. Owners and operators of vessels that offload the fish would be required to complete the form as well, though they are not required to do so under the current regulations.

The transshipment reporting requirements under CMM 2009–06 do not include several of the pieces of information on the existing form, which, again, is currently required to be

completed only by owners or operators of receiving vessels. These include: (1) The receiving vessel permit number; (2) the broker or shipping agent of the receiving vessel; (3) the port of landing of the receiving vessel; (4) the number of days the offloading vessel fished; (5) the number of sets made by the offloading vessel; (6) the average number of hooks fished per day by the offloading vessel; and (7) the general area of the offloading vessel's catch, broken into four specific quadrants. Based on the recommendations of the Western Pacific Fishery Management Council at its 148th Meeting, NMFS proposes to include the port of landing and broker or shipping agent information requirements in the new transshipment report form; the other pieces of information that are not required under the provisions of CMM 2009–06 would not be included.

#### *Requirements for Vessels Fishing for HMS in the U.S. EEZ Off the Coasts of Washington, Oregon, California, or Adjacent High Seas Waters*

Current Federal regulations require the operator of any commercial fishing vessel or recreational charter vessel fishing for HMS in the management area of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species to maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms available from the NMFS Southwest Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hours of the completion of each fishing day. The current version of these forms includes information about at-sea transshipments. The original form for each day of the fishing trip must be submitted to the NMFS Southwest Regional Administrator within 30 days of each landing or transshipment of HMS (50 CFR 660.708(a)). The form currently only requires three pieces of information regarding transshipments—the date, transshipper (receiving vessel), and amount (tonnage) of fish transshipped. Such information is required to be reported only for transshipments that take place at sea. Under this proposed rule, vessel owners and operators subject to the transshipment requirements at 50 CFR part 660 and the requirements proposed in this rule would be required to complete and submit the current report form as well as the new transshipment report proposed in this rule.

#### **Proposed Action**

This proposed rule contains the following seven new categories of

requirements: (1) Reporting requirements for transshipments, including the information specified in Annex I of CMM 2009–06 for the transshipment report; (2) requirements for providing notice of transshipments on the high seas or emergency transshipments that would otherwise be prohibited; (3) requirements for observer coverage for transshipments at sea; (4) restrictions on the vessels with which transshipping, bunkering or other support activities may be conducted; (5) requirements regarding notification of entry into and exit from the Eastern SMA; (6) requirements regarding discards from purse seine fishing vessels; and (7) other requirements. Each of these categories of requirements is described in detail below.

### 1. Transshipment Reporting Requirements

The owner and operator (operator means, with respect to any vessel, the master or other individual aboard and in charge of that vessel) of any U.S. fishing vessel used for commercial fishing that transships HMS in the Convention Area, whether from an offloading or receiving vessel, or that transships HMS caught in the Convention Area, whether from an offloading or receiving vessel, would be required to ensure the completion of and submission to NMFS of a transshipment report form available from the NMFS Pacific Islands Regional Administrator. A separate report would be required for each transshipment. As some of the information might be known by only the receiving vessel operator and some of the information might be known only by the offloading vessel operator, the operators of both vessels may need to exchange information regarding transshipment activities.

The information specified on the report would need to be recorded within 24 hours of completion of the transshipment. For transshipments on the high seas or for emergency transshipments that would otherwise be prohibited, the report would be required to be submitted by email or fax to the appropriate address specified by the NMFS Pacific Islands Regional Administrator no later than 10 calendar days after completion of the transshipment. The report could be submitted without signatures to accommodate vessels that remain at sea for a substantial period of time and that might, for example, need to report the information needed on the form via radio to a shore agent because they do not have fax or email capabilities. This would enable NMFS to submit the

report to the Commission within the 15-day due date under the CMM.

The original, signed copy of the report would be submitted to the address specified on the form no later than 15 calendar days after the vessel first enters into port or 15 calendar days after the transshipment for emergency transshipments in port. For all other transshipments, if the vessel owner and operator is subject to current transshipment reporting requirements at 50 CFR part 300 subpart D, 50 CFR part 660, or 50 CFR part 665, the transshipment report would be required to be submitted by the due date for submitting the original report specified in those regulations. If the vessel owner and operator are not subject to any of the current requirements, for transshipments at sea the report would be required to be submitted no later than 72 hours after the vessel first enters into port; for transshipments in port, the report would be required to be submitted no later than 72 hours after completion of the transshipment.

### 2. Prior Notice for High Seas Transshipments and Notice of Emergency Transshipments

Under the current requirements at 50 CFR 300.216, transshipments at sea involving purse seine vessels are currently prohibited in the Convention Area. As discussed above, CMM 2009–06 also obligates CCMs to prohibit the transshipment at sea of HMS caught in the Convention area by purse seine vessels regardless of the location of the transshipment. Accordingly, the rule proposes to revise the regulations at 50 CFR 300.216 to include that additional prohibition.

For any transshipment of HMS on the high seas in the Convention Area or on the high seas anywhere of HMS caught in the Convention Area that are not prohibited (e.g., high seas transshipments by vessels other than purse seine vessels), vessel owners and operators would be required to ensure the submission to the Commission of notice of the transshipment, as specified in CMM 2009–06, at least 36 hours prior to the transshipment. The notice would be provided by fax or email, and would include the following information: (1) The name of the offloading vessel; (2) the vessel identification markings located on the hull or superstructure of the offloading vessel; (3) the name of the receiving vessel; (4) the vessel identification markings located on the hull or superstructure of the receiving vessel; (5) the expected amount, in metric tons, of the fish product being transshipped, broken down by species and processed state; (6) the expected

date or dates of the transshipment; (7) the expected location of transshipment, including latitude and longitude to the nearest tenth of a degree; (8) an indication of which one of the following areas the expected transshipment location is situated—high seas inside the Convention Area, high seas outside the Convention Area, or an area under the jurisdiction of a particular nation—in which case the nation must be specified; and (9) the geographic location of the catch: The expected amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: Inside the Convention Area on the high seas, outside the Convention Area on the high seas, and within areas under the jurisdiction of a particular nation, with each such nation and the associated amount specified. Information regarding the geographic location of the catch is not required, however, if the reporting vessel is the receiving vessel. The transshipment would be required to take place within 24 nautical miles of the expected location provided in the notice.

Notice would also be required for emergency transshipments that would otherwise be prohibited. An emergency transshipment would be defined as a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage. Each vessel owner or operator that qualifies for the emergency would be required to ensure the provision of the notice directly to the Commission by fax or email within 12 hours of completion of the transshipment and would be required to ensure the inclusion of the same information described above for the notice for high seas transshipments, as well as a description of the reasons for the emergency transshipment. The transshipment would be required to take place within 24 nautical miles of the location provided in the notice.

This proposed rule would allow emergency transshipments involving purse seine vessels to take place at sea in the Convention Area; such transshipments are currently prohibited under the regulations. The current regulations implement Article 29, Paragraph 5 of the Convention and are intended to prohibit at sea transshipments by purse seine vessels operating in the Convention Area, subject to specific exemptions adopted by the WCPFC. CMM 2009–06 affirms the prohibition set forth at Article 29, Paragraph 5 of the Convention, requires

CCMs to prohibit transshipments at sea involving purse seine vessels of fish caught in the Convention Area but transshipped outside of the Convention Area, and sets forth specific exemptions for transshipment at sea by purse seine vessels, such as for an emergency.

A copy of each notice would be required to be submitted to NMFS by the same due dates specified for submission to the Commission: at least 36 hours prior to transshipment on the high seas or 12 hours after completion of an emergency transshipment.

### 3. Observer Coverage for Transshipments at Sea

Transshipments at sea in the Convention Area would require observer coverage for vessels, with the specific requirements dependent upon the type of vessel and the type of fish to be transshipped. Observer coverage would not be required for emergency transshipments at sea (i.e., a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage). The observers would be required to be WCPFC Observers. Observers deployed by NMFS are currently considered WCPFC Observers, as the program has completed the required authorization process to become part of the WCPFC Regional Observer Programme (ROP). For most transshipments, an observer would be required on board the receiving vessel. However, for transshipments to a receiving vessel less than or equal to 33 meters in length, and not involving purse seine-caught fish or frozen longline-caught fish, the observer could be deployed on either the offloading vessel or receiving vessel. In addition, transshipments to receiving vessels greater than 33 meters in length and involving only troll-caught or pole-and-line-caught fish would not require an observer until January 1, 2013. All involved vessel owners and operators would need to ensure that a WCPFC Observer is on board one of the two vessels to monitor the transshipment for the duration of the transshipment, even when the requirement to carry an observer falls on the other vessel involved in the transshipment (e.g., the observer requirement is only for the receiving vessel). The owner or operator of a vessel requiring an observer for transshipments at sea would need to ensure that notice is provided to the NMFS Pacific Islands Regional Administrator at least 72 hours (exclusive of weekends and Federal

holidays) before the vessel leaves port on the fishing trip indicating the need for an observer. The notice would need to include the official number of the vessel, the name of the vessel, intended departure date, time and location, the name of the operator, and a telephone number at which the owner, operator, or a designated agent may be contacted during the business day (8 a.m. to 5 p.m. Hawaii Standard Time). If applicable, notice could be provided in conjunction with the notice required under 50 CFR 665.803(a).

Vessel owners, operators, and crew would be required to provide any WCPFC Observer on board with full access to their vessel during the transshipments, as well as access to information and data sources regarding the transshipment. CMM 2009-06 includes provisions for allowing observers full access to both the unloading and the receiving vessel and requires the WCPFC to develop guidelines for the safety of observers moving between vessels. NMFS intends to implement this provision of the CMM after the WCPFC develops and issues appropriate safety guidelines.

CMM 2009-06 specifies that during transshipment, a receiving vessel must receive product from only one offloading vessel at a time for each observer that is available to monitor the transshipment; the observer may be on the offloading or receiving vessel. Accordingly, if only one WCPFC Observer is available, the receiving vessel would be able to receive HMS from only one offloading vessel at a time.

The requirements described above would be implemented through amendments to the current WCPFC observer requirements for U.S. vessels set forth at 50 CFR 300.215 and to the regulations at 50 CFR 300.216.

### 4. Categories of Vessels With Which Transshipping and Bunkering May Be Conducted

The owner and operator of any U.S. fishing vessel used for commercial fishing for HMS would be required to ensure that any vessel with which they engage in transshipment (to or from) in the Convention Area; or engage in bunkering or other support activities (to or from) in the Convention Area falls into one of the three of the following categories. The vessels must be: (1) Flagged by a WCPFC Member or Cooperating Non-Member; (2) on the Interim Register, which is available at <http://www.wcpfc.int/>; or (3) on the WCPFC Record of Fishing Vessels, which is available at <http://www.wcpfc.int/>. Only fishing vessels

that are authorized to be used for fishing in the U.S. EEZ would be able to transship and/or bunker in the U.S. EEZ.

### 5. Requirements Regarding Notification of Entry Into and Exit From Eastern SMA

The owner or operator of any U.S. fishing vessel used for commercial fishing would be required to ensure the submission of a notice to the Commission containing specific information at least six hours prior to entry and no later than six hours prior to exiting the Eastern SMA. The notices would be required to be submitted in the format specified by the NMFS Pacific Island Regional Administrator via fax or email and would include the following information: (1) The vessel identification markings located on the hull or superstructure of the vessel; (2) whether the notice is for entry or exit; (3) date and time of anticipated point of entry or exit; (4) latitude and longitude of anticipated point of entry or exit; (5) amount of fish product on board at the time of the report, in kilograms, in total and for each of the following species or species groups: Yellowfin tuna, bigeye tuna, albacore, skipjack tuna, swordfish, shark, other; and (6) an indication of whether the vessel has engaged in or will engage in any transshipments while in the Eastern SMA. A copy of the notice would be required to be provided to NMFS at least six hours prior to the entry and no later than six hours prior to the exit. As discussed in more detail in the IRFA, below, these requirements would overlap with current reporting requirements for U.S. purse seine vessels; the current requirements require notice to be provided every time a vessel enters or exits the EEZ of a Pacific Island Party to the Treaty.

### 6. Requirements Regarding Discards From Purse Seine Fishing Vessels

The owner or operator of any U.S. purse seine fishing vessel would be required to ensure the submission of a report containing specific information to the Commission and a copy of the report to NMFS no later than 48 hours after any discard at sea of fish. The reports would be required to be submitted in the format specified by the NMFS Pacific Islands Regional Administrator via fax or email. A hard copy of the report would be required to be submitted to the observer on board the vessel. This report would overlap with current purse seine catch reporting requirements, as discussed in more detail below in the IRFA.



## 7. Other Requirements

This proposed rule would prohibit the transfer of fish at sea from a purse seine net deployed by or under the control of a fishing vessel of the United States to another fishing vessel in the Convention Area. However, as discussed above, the proposed rule includes a narrow exception that would allow U.S. purse seine vessels to transfer fish through net sharing to other U.S. purse seine vessels on the final set of a trip when there is insufficient well space for the fish. The proposed rule would amend the current regulatory definition of transshipment to exclude net sharing from the definition as purse seine vessels are generally prohibited from engaging in transshipment of HMS at sea. Under the exception for net sharing, the purse seine vessel that transfers fish through net sharing would be prohibited from making further purse seine sets during the remainder of its fishing trip.

Furthermore, in waters under the jurisdiction of the United States, net sharing would be allowed only between U.S. vessels that are authorized to be used for fishing in that area. In the event of a net share, the owner and operator of the vessel that caught the fish would record the catch, as required under 50 CFR 300.34(c)(1) on the Regional Purse Seine Logsheets (RPLs), and would also be required to note that the net sharing had taken place, in the manner specified by the NMFS Pacific Islands Regional Administrator, on the RPL. The owner and operator of the vessel that received the fish would also be required to note on the RPL that the net sharing had taken place, in the manner specified by the NMFS Pacific Islands Regional Administrator.

In addition to the new requirements, the proposed rule would amend the language that is in 50 CFR 300.223(d) to remove the termination date (December 31, 2012) applicable to the current catch retention provision. The proposed rule would also correct 50 CFR 300.222(y), which is inconsistent with 50 CFR 300.223(d)(3). Section 300.223(d)(3) states that the catch retention requirements are applicable to the entire Convention Area. However, section 300.222(y) states that the prohibition on discarding fish at sea in contravention of section 300.223(d) is limited to the high seas and areas within the jurisdiction of the United States, including the EEZ and territorial sea between 20° N. latitude and 20° S. latitude. This proposed rule would amend section 300.222(y) to amend the description of the requirement to state that the retention requirements are

applicable to the entire Convention Area.

The proposed rule would also include a minor change to the wording of the current language at 50 CFR 300.216(b) so that the terminology referring to U.S. purse seine vessels is consistent throughout 50 CFR 300 Subpart O—the phrase “purse seine fishing vessel of the United States” would be replaced with “fishing vessel of the United States equipped with purse seine gear.”

As mentioned above, CMM 2009–06 requires CCMs to prohibit transshipments at sea involving purse seine vessels of fish caught in the Convention Area but transshipped outside of the Convention Area. Accordingly, the proposed rule would include this prohibition. The proposed rule would also allow emergency transshipments involving purse seine vessels to take place at sea in the Convention Area.

### Classification

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

### Executive Order 12866

The proposed rule was determined not to be significant for purposes of Executive Order 12866.

### Regulatory Flexibility Act

An IRFA was prepared, as required by section 603 of the RFA. 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 above in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble, in particular, in the first few paragraphs of this section and in the section titled Proposed Action. The analysis follows:

There would be no disproportionate economic impacts between small and large entities operating vessels as a result of this proposed rule. Furthermore, there would be no disproportionate economic impacts based on vessel size, gear, or homeport.

The proposed rule would apply to owners and operators of U.S. HMS fishing vessels used to: (1) Transship HMS in the Convention Area or to transship outside the Convention Area HMS caught in the Convention Area; (2) enter or exit the Eastern SMA; or (3) purse seine for HMS in the Convention Area. The estimated number of affected

entities is as follows, broken down by vessel type:

Based on the number of longline vessels permitted to fish under the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region or the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species as of January 2011, the estimated number of longline vessels to which the rule would apply is 170. Based on the number of purse seine vessels licensed under the South Pacific Tuna Treaty as of January 2011, the estimated number of purse seine vessels to which the rule would apply is 36. Based on the average annual number of albacore troll vessels that fished in the Convention Area during 2002–2009, the estimated number of troll vessels to which the rule would apply is 26. The total estimated number of vessels that would be subject to the rule is 232.

Based on the best available financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses in the longline and troll fleets are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$4.0 million. In the purse seine fleet, most or all of the businesses that operate these vessels are large entities as defined by the RFA. However, it is possible that one or a few of these fish harvesting businesses meet the criteria for small entities, so the purse seine fleet is included in the remainder of this analysis.

The reporting, recordkeeping and other compliance requirements of this proposed rule are described earlier in the preamble. The classes of small entities subject to the requirements and the types of professional skills necessary to fulfill the requirements are as follows:

(1) Transshipment reporting: This requirement is part of a proposed collection of information subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The requirement to complete and submit transshipment reports to NMFS would apply to the owners and operators of any vessel used to offload or receive a transshipment of HMS in the Convention Area or a transshipment outside the Convention Area of HMS caught in the Convention Area. Accordingly, it would apply to all the vessels identified above (170 longline, 36 purse seine, and 26 troll). It is estimated that each transshipment report would require about 60 minutes



of labor and \$1 in communication costs for transmitting each report electronically and in hard copy to NMFS. The value of the required labor is estimated to be \$60 per hour. The estimated cost of compliance is therefore about \$61 per report. The estimated compliance costs per affected entity are described below, by vessel type:

Each longline vessel is expected to transship between zero and approximately four times per year. The estimated annual cost of compliance is therefore between \$0 for a vessel that does not transship to about \$244 for a vessel that transships four times per year.

Each purse seine vessel is expected, based on the U.S. purse seine fleet's transshipment patterns during 2008 and 2009, to transship between zero and approximately 19 times per year. The estimated annual cost of compliance is therefore between \$0 for a vessel that does not transship to about \$1,159 for a vessel that transships 19 times per year.

Each troll vessel is expected to transship between zero and approximately two times per year. The estimated annual cost of compliance is therefore between \$0 for a vessel that does not transship to about \$122 for a vessel that transships two times per year.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(2) Prior notice for high seas transshipments and emergency transshipments: This requirement is part of a proposed collection of information subject to approval by the Office of Management and Budget (OMB) under the PRA. The requirement to provide prior notice for transshipments would apply to the owners and operators of any vessel used for any transshipment on the high seas, as well as for any emergency at-sea transshipment that would be otherwise prohibited. Accordingly, it would apply to all the vessels identified above (170 longline, 36 purse seine, and 26 troll). It is estimated that each transshipment notice would require about 15 minutes of labor and no more than \$1 in communication costs. The value of the required labor is estimated to be \$60 per hour. The estimated cost of compliance is therefore about \$16 per notice. The estimated compliance costs per affected entity are described below, by vessel type:

Each longline vessel is expected to transship on the high seas between zero and approximately four times per year. The estimated annual cost of

compliance is therefore between \$0 for a vessel that does not transship on the high seas to about \$64 for a vessel that transships on the high seas four times per year.

Purse seine vessels would not be allowed to transship at sea except under emergency situations. Each purse seine vessel is expected to transship at sea under emergency situations between zero and approximately one time per year. The estimated annual cost of compliance is therefore between \$0 for a vessel that does not transship at sea to about \$16 for a vessel that transships at sea once per year.

Each troll vessel is expected to transship on the high seas between zero and approximately two times per year. The estimated annual cost of compliance is therefore between \$0 for a vessel that does not transship on the high seas to about \$32 for a vessel that transships on the high seas two times per year.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(3) Observer coverage for transshipments at sea: This includes a requirement to carry a WCPFC observer on certain trips involving transshipments, as well as a requirement to notify NMFS in advance of such a trip so that an observer can be deployed on the vessel. The pre-trip notification aspect is part of a proposed collection of information subject to approval by the OMB under the PRA. The remaining aspects of the requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the PRA). These requirements would not apply to purse seine vessels because they are not allowed to transship at sea, and they generally would not apply to troll vessels because for transshipments involving troll-caught fish, an observer would in most cases be required on the receiving vessel, not the offloading vessel. If a U.S. troll vessel were used to receive a transshipment, then the requirements to notify NMFS in advance of the trip and to carry an observer would apply to the troll vessel, and if the receiving vessel were less than 33 meters in length, the required observer could be carried by either the offloading or receiving vessel. However, based on the history of the fishery, in which all recorded transshipments have been made to large foreign-flagged carriers, these cases are expected to be rare. Thus, except in rare cases, only the longline fleet would be subject to these requirements, and the estimated total

number of affected entities is approximately 170, as described above.

Pre-trip notification: It is estimated that each pre-trip notification would require 1 minute of labor and about \$1 in communication costs. The value of the required labor is estimated to be \$60 per hour. The estimated cost of compliance is therefore about \$2 per notification. Fishing vessel operators might not always know in advance of a fishing trip whether they will need or want to transship at sea during that trip. Consequently, they might sometimes make a pre-trip notification, and carry a WCPFC observer, on trips that ultimately do not involve transshipments at sea. In other words, a pre-trip notification is expected to be made for each trip during which the fishing vessel operator wants to maintain the opportunity to transship at sea, and the number of such occasions might be greater than the number of fishing trips during which at-sea transshipments actually occur. The number of pre-trip notifications cannot be predicted with any certainty, but for the purpose of this analysis each longline vessel is expected to make a pre-trip notification between zero and approximately four times per year. The estimated annual cost of compliance is therefore between \$0 for a vessel that does not make any pre-transshipment notifications to about \$8 for a vessel that makes four pre-transshipment notifications per year.

Requirement to carry observer: It is assumed that the Observer Program administered by NMFS will continue to be authorized by the WCPFC to be part of the WCPFC ROP. Thus, observers deployed by NMFS pursuant to regulations at 50 CFR Part 665 would be deemed to be WCPFC observers deployed in accordance with this new requirement. As such, vessel owners and operators would bear additional compliance costs under this requirement only in cases where an observer is required under this rule but a WCPFC or NMFS observer is not required under other regulations. For example, the shallow-set and deep-set sectors of the Hawaii longline fleet are subject to observer coverage rates of 100 and approximately 20 percent (in terms of fishing trips), respectively. The compliance cost for a vessel that engages solely in shallow-set trips is therefore expected to be nil. For deep-setting vessels, on any given fishing trip during which a vessel operator wants to maintain the opportunity to transship at sea there is a 20 percent chance that an observer will be deployed under other regulations, in which case this new requirement would bring no new

compliance costs. If the vessel is used to offload a transshipment to a longline vessel that is on a declared shallow-set trip, the observer deployed on the receiving vessel would satisfy this proposed requirement, and again, the compliance cost for the offloading vessel (as well as for the receiving vessel) would be nil. It is not possible to project with any certainty the frequency or combinations of the trip types that longline vessels will be engaged in when they transship. For the purpose of estimating compliance costs here, it is roughly projected that any given longline vessel will request an observer between 0 and 4 fishing trips per year, and that the proposed observer requirement will be satisfied by current regulations (i.e., that there will be no new compliance costs) for 25 percent of those 0 to 4 fishing trips per year. In the remaining 75 percent of the cases; that is, for trips on which an observer is deployed under this new requirement, the affected entity would be responsible for the costs associated with providing the observer with food, accommodations, and medical facilities. These costs are expected to be about \$20 per day (this is consistent with the amounts reimbursed by NMFS to owners of longline vessels for observer subsistence costs pursuant to 50 CFR 665.808(i)(1)). Based on deep-set fishing trip lengths by the Hawaii longline fleet during 2009 and 2010, each affected longline fishing trip is expected to be about 24 days in duration, on average. The estimated annual cost of compliance for longline vessels is therefore between \$0 for a vessel that does not request any observers to transship at sea to about \$1,440 for a vessel that requests observers to transship at sea four times per year. As described above, vessels other than longline vessels would not be expected to bear any observer-related compliance costs except in rare cases. In those cases, as for longline vessels, the direct cost of compliance is expected to be about \$20 for each day that an observer is carried. In addition to the direct costs of accommodating observers, as described above, owners and operators of vessels that engage in transshipment would be responsible for ensuring that an observer is present, even when the requirement to carry an observer falls on the other vessel involved in the transshipment. This would bring indirect compliance costs. Vessel owners and operators would also be faced with having to decide in advance of any given trip whether or not to request an observer. Because they may not always know in advance of trip

whether they will want or need to transship during that trip, having to decide in advance would be burdensome and bring indirect costs associated with the risk of making the "wrong" decision. The magnitude of these indirect compliance costs cannot be predicted.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(4) Restrictions on vessels with which transshipping and bunkering may be conducted: This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the PRA). The requirement to transship with or be bunkered by a vessel only if such vessel is authorized in accordance with WCPFC decisions would apply to owners and operators of any vessel used for transshipment of HMS in the Convention Area. Accordingly, it would apply to all the vessels identified above (170 longline, 36 purse seine, and 26 troll). The costs of compliance are expected to be nil or minor because the requirement is not expected to be constraining. The vessels with which transshipping and bunkering may take place include any vessel flagged by a WCPFC Member or Cooperating Non-Member, vessels on the WCPFC Record of Fishing Vessels (i.e., any vessel authorized to be used for fishing in the Convention Area in areas outside the jurisdiction of its flag State (e.g., on the high seas or in the areas of jurisdiction of coastal States that are not the flag State)), and vessels on the Interim Register, placement on which requires a nomination by a member of the WCPFC and an annual fee of \$2,500. It is expected to be a rare occurrence that a vessel other than those types would be active in the Convention Area.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(5) Notice of entry or exit for the Eastern SMA: This requirement is part of a proposed collection of information subject to approval by the Office of Management and Budget (OMB) under the PRA. The requirement to provide notice in advance of each entry into and each exit out of the Eastern SMA would apply to the owners and operators of any vessel used for commercial fishing for HMS in the Convention Area or which has, or is required to have, a WCPFC Area Endorsement. Accordingly, it would apply to all the vessels identified above (170 longline, 36 purse seine, and 26 troll). It is estimated that each notice would

require about 15 minutes of labor and no more than \$1 in communication costs. The value of the required labor is estimated to be \$60 per hour. The estimated cost of compliance is therefore about \$16 per notice. The estimated compliance costs per affected entity are described below, by vessel type:

Each longline vessel is expected to enter the Eastern SMA between zero and approximately four times per year (and exit the same number of times). The estimated annual cost of compliance is therefore between \$0 for a vessel that does not enter the pocket to about \$128 for a vessel that enters the Eastern SMA four times per year and exits the Eastern SMA four times per year.

Each purse seine vessel is expected to enter the Eastern SMA between zero and approximately two times per year (and exit the same number of times). The estimated annual cost of compliance is therefore between \$0 for a vessel that does not enter the pocket to about \$64 for a vessel that enters the Eastern SMA two times per year and exits the Eastern SMA two times per year.

Each troll vessel is expected to enter the Eastern SMA between zero and approximately two times per year (and exit the same number of times). The estimated annual cost of compliance is therefore between \$0 for a vessel that does not enter the pocket to about \$64 for a vessel that enters the Eastern SMA two times per year and exits the Eastern SMA two times per year.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(6) Purse seine discard report: This requirement is part of a proposed collection of information subject to approval by the Office of Management and Budget (OMB) under the PRA. The requirement to submit a report to the WCPFC any time that tuna are discarded at sea would apply to the owners and operators of any purse seine vessel used for commercial fishing for HMS in the Convention Area. Accordingly, it would apply to an estimated 36 purse seine vessels, as identified above. It is estimated that each report would require about 30 minutes of labor and no more than \$1 in communication costs. The value of the required labor is estimated to be \$60 per hour. The estimated cost of compliance is therefore about \$31 per report. Based on the purse seine fleet's discard patterns during 2008, the most recent year for which complete data are available, each purse seine vessel is expected to discard tuna at sea and have to report on such discards approximately 17 times per

year, on average. The estimated annual cost of compliance is therefore \$527 per vessel per year, on average.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(7) Other requirements: The net-sharing restrictions and reporting requirement and the removal of the termination date (December 31, 2012) of the current catch retention requirements would not impose any new reporting or recordkeeping requirements (within the meaning of the PRA), but the net sharing reporting requirement would modify the information required to be reported under a current information collection (OMB control number 0648-0218). Specifically, when fish are shared, the owners and operators of both vessels involved would have to indicate on their respective catch report forms (also known as RPLs) that, for that set, a specified amount of fish were shared with a specified other vessel. This reporting requirement is not expected to add to the current reporting burden or bring other compliance costs.

The proposed restrictions on net-sharing—specifically, that it may be done only on the last set and only between U.S. vessels, would apply to the owner and operator of any purse seine vessel used for commercial fishing for HMS in the Convention Area. Accordingly, it would apply to an estimated 36 purse seine vessels, as identified above. Because the main motivation for net sharing is to avoid discarding fish that cannot be accommodated in fish wells that are full, vessel operators are likely to want to net-share only on the last set. Accordingly, the last-set restriction is expected to bring little, if any, compliance costs. The restriction on net-sharing only between U.S. vessels would be constraining and therefore bring costs, but because data are not available on the frequency of net sharing or the flags of vessels with which net-sharing occurs, the magnitude of those costs cannot be predicted.

Removing the termination date of the current catch retention requirements would bring an extension of the costs to purse seine fishing entities associated with having to fill well space with less valuable, and in some cases, unmarketable, product. Those costs cannot be quantified. The costs would likely be different for vessels that tend to operate out of Pago Pago and deliver their catch to the canneries in Pago Pago versus vessels that transship most of their catch to other vessels. For vessels in the former category, which have to steam relatively far from the fishing

grounds in order to land their fish, a fishing trip typically only ends when the fish holds are full in order to maximize revenue during a given trip. Revenues and profits for these vessels are therefore strongly dependent on the size of their fish wells and on the value of fish per unit of well space. There have been occasions when the canneries have charged vessel operators to unload small fish. If that occurs with small fish that under this proposed rule are retained that otherwise would not be, vessel owners and operators would bear direct economic costs. For vessels that tend to transship their catches at ports near the fishing grounds, well space is a less important constraint on profits, so the economic impacts of this requirement on these vessels would likely be less.

Fulfillment of these requirements is not expected to require any professional skills that the vessel owners and operators do not already possess.

A number of Federal rules overlap with the proposed rule, as described below for each of the seven elements of the proposed rule:

(1) Transshipment reporting requirements: For purse seine vessels, there are two current transshipment reporting requirements under the SPTA that overlap with the proposed reporting requirement in that much of the information required under the proposed report is already required under the current reports. The first requirement is at 50 CFR 300.34(c)(2) and applies to all unloadings, including transshipments. The second is at 50 CFR 300.34(c)(9) and applies only to transshipments. The timing requirements and the recipients of the current and proposed reports differ in some respects. The proposed report would have to be submitted to the NMFS Pacific Islands Regional Administrator within 14 days after completion of the transshipment, except in the case of at-sea transshipments, which would be allowed only in specified emergency circumstances, and for which the report would have to be submitted to the NMFS Pacific Islands Regional Administrator within 10 days of completion of the transshipment. A copy of the current report under 50 CFR 300.34(c)(2) must be received by NMFS within two days of completion of the transshipment. In addition, the original report must be submitted to the FFA, as Treaty Administrator on behalf of the 16 Pacific Island Parties (PIP) to the Treaty, within 14 days of completion of the transshipment (this timing is consistent with the timing of the submission of the original of the proposed report). The current report under 50 CFR

300.34(c)(9) must be submitted to the FFA and to the PIP in whose jurisdiction the transshipment took place. It has no regulatory due date. The current reports would not fully satisfy the objectives of the proposed report—that is, they do not collect all the information needed under WCPFC CMM 2009-06. Furthermore, the two current reports under the SPTA must be sent in particular formats that are specified under the Treaty and cannot be changed in U.S. regulations unless and until the Treaty is amended accordingly. For these reasons, the proposed requirement not only overlaps with the two current SPTA reporting requirements but would also duplicate them to some extent, unless and until the Treaty is amended in such a way that the duplication can be removed.

For longline vessels, the proposed reporting requirement overlaps with a current transshipment reporting requirement at 50 CFR 665.14(c). The current requirement applies only to vessels that receive longline-caught fish and subsequently land or transship the fish in the western Pacific region. The timing and recipient of the proposed report would be the same as those for the current report (submit to the NMFS Pacific Islands Regional Administrator within 72 hours of the vessel reaching port after the transshipment). The form used for the proposed requirement would be designed to accommodate the current requirement and would replace the form used for the current requirement, so although the two requirements would overlap, there would be no duplication in the reporting burden.

For troll vessels, the proposed reporting requirement overlaps with a current transshipment reporting requirement at 50 CFR 660.708(a), which is for catch and effort reporting generally and applies to operators of HMS fishing vessels operating for commercial fishing in the portion of the EEZ off the U.S. west coast and in adjacent high seas areas. The current reporting form used by albacore troll fishermen requires that the date, receiving vessel, and amount transshipped be recorded for any at-sea transshipment. The timing of the proposed report would be the same as that for the current report (submit to NMFS within 30 days of the transshipment). The proposed requirement would satisfy the current reporting requirement, but because the current requirement applies to a much larger group of fishermen than the proposed requirement, and because the transshipment-related information required under the current report is

relatively limited and a small part of the catch/effort reporting form, it would not be practical to remove the duplication in the two requirements.

(2) Prior notice for high seas transshipments and emergency transshipments: For purse seine vessels only, the current requirement under the SPTA to provide notification in advance of each transshipment (50 CFR 300.34(c)(5)) overlaps with the proposed pre-transshipment notification requirement, but only in the case of emergency at-sea transshipments (because purse seine vessels are not allowed to transship at sea otherwise). The substance, timing, and recipients of the proposed and current notifications differ. Because of these differences, it would not be practical to remove the duplication between the two notification requirements.

(3) Observer coverage for transshipments at sea: The pre-trip notification aspect of this proposed requirement, which, except in rare cases would apply only to longline vessels, overlaps with an current pre-trip notification requirement for longline vessels at 50 CFR 665.803(a). The current requirement applies in the case of all fishing trips, and is used by NMFS in part to notify the vessel operator whether the vessel must carry an observer on that trip (observers are deployed according to a sampling scheme). The proposed notification would apply only in the case that a vessel operator wants to carry an observer in order to maintain the opportunity to transship at sea on a given fishing trip. Thus, although the two requirements would overlap, there would be no duplication in the substance of the reports. Furthermore, the timing and format of the proposed requirement would be such that vessel operators could provide the proposed notification at the same time (e.g., during the same phone call) that they provide the current notification. For vessel types other than longline vessels, no duplicating, overlapping or conflicting Federal regulations have been identified.

The proposed requirement that vessels carry an observer in certain situations involving transshipments would overlap for longline vessels with current observer requirements at 50 CFR 665.808 (for longline vessels) and 50 CFR 300.215 (for vessels used to fish for HMS on the high seas in the Convention Area). The proposed requirement would be such that carrying an observer under any of the current observer requirements would satisfy the proposed requirement, so there would be no duplication among the requirements. For purse seine

vessels and troll vessels, there would be no overlapping, duplicative, or conflicting requirements except in the expectedly rare case that a troll vessel would be required to carry an observer, in which case the proposed requirement overlaps with the requirements at 50 CFR 660.719 (for west coast HMS vessels) and 50 CFR 300.215 (for vessels used to fish for HMS on the high seas in the Convention Area). Regarding the latter regulation, compliance with the current requirement would satisfy the proposed requirement, so there would be no duplication in the requirements. Under the former regulation, west coast-based troll vessels must carry NMFS observers when directed to do so by NMFS, but NMFS has not been deploying any observers on troll vessels under that requirement. However, because observers deployed by NMFS are currently considered WCPFC observers, as the program has completed the required authorization process to become part of the WCPFC ROP, this proposed requirement would not duplicate that requirement—the same observer could be used to fulfill both requirements.

(4) Restrictions on vessels with which transshipping and bunkering may be conducted: No duplicating, overlapping or conflicting Federal regulations have been identified.

(5) Notice of entry or exit for Eastern SMA: For purse seine vessels only, the current requirement under the SPTA to provide notification upon entry or exit into the EEZ of any PIP (50 CFR 300.34(c)(6)) overlaps with the proposed notification requirement, but only for those EEZs that border the Eastern SMA; that is, the EEZs of Kiribati, Cook Islands, and French Polynesia. The information required in the two notifications differs slightly. The current notification does not have a specific timing requirement. The recipients of the two notifications differ in that the current one must be sent to an authority of the relevant PIP while the proposed notification would have to be sent to the WCPFC and to NMFS. The current notification cannot be modified in any way unless and until the Treaty is amended accordingly, so the current notification could not be used to satisfy this proposed notification requirement, nor vice versa, so there would be some duplication between the two requirements.

For vessel types other than purse seine vessels, no duplicating, overlapping or conflicting Federal regulations have been identified.

(6) Purse seine discard report: This reporting requirement, which would apply only to purse seine vessels, would

overlap with a current SPTA reporting requirement at 50 CFR 300.34(c)(1). The current requirement to maintain and submit “catch report forms,” also known as “Regional Purse Seine Logsheets” or “RPLs”, calls for information on fishing effort and catches, including information on the amount of fish, by species, that is discarded each day, including the reason for each such discard. The timing requirements and the recipients of the current and proposed reports differ in some respects. The proposed report would have to be submitted to the WCPFC and to NMFS within 48 hours after each discard event. The current report must be submitted to and received by NMFS within two days after the vessel next reaches port. In addition, it must be submitted to the FFA, as Treaty Administrator on behalf of the PIP, within 14 days after the vessel next reaches port. Furthermore, the current report must be sent on a particular form that is specified under the Treaty and cannot be changed in U.S. regulations unless and until the Treaty is amended accordingly. Because of these differences, the proposed requirement not only overlaps with the current SPTA requirement but would also duplicate it to a large extent, unless and until the Treaty is amended in such a way that the duplication can be removed.

(7) Net-sharing restrictions and reporting: No duplicating, overlapping or conflicting Federal regulations have been identified.

NMFS has attempted to identify alternatives that would accomplish the objectives of the Act and minimize any significant economic impact of the proposed rule on small entities. The alternative of taking no action at all was rejected because it would fail to accomplish the objectives of the WCPFC Implementation Act. As a Contracting Party to the Convention, the United States is required to implement the decisions of the WCPFC. Consequently, NMFS has limited discretion as to how to implement those decisions.

With respect to element (1), transshipment reporting requirements, one alternative would be to impose a uniform timeframe for submission of the report; to satisfy all current requirements and the provisions of CMM 2009-06, it would have to be submitted to NMFS within 10 calendar days after completion of the transshipment. This would be more burdensome than the proposed requirement for certain types of fishing vessels and is not preferred for that reason. NMFS has not identified any alternatives that would be less burdensome than the proposed

requirement and that would accomplish the objectives of the WCPFC Implementation Act.

With respect to element (2), prior notice for high seas transshipments and emergency transshipments, one alternative would be to give affected entities the option of either providing the notice of high seas transshipment to NMFS at least one business day plus 36 hours in advance of the transshipment (i.e., 60 hours before the transshipment), or, as under the proposed rule, providing the notice directly to the WCPFC at least 36 hours in advance of the transshipment, with a copy to NMFS. This flexibility could relieve the burden for some entities and/or situations; specifically, in cases where it is less burdensome to send the notification to NMFS than to the WCPFC. Under this alternative, if a vessel operator exercises the first option, NMFS would have to forward the notification to the WCPFC within one business day, so this alternative would bring some additional administrative costs to NMFS. This alternative would also have the disadvantage of being more complex and possibly more confusing to affected entities than the proposed rule (under which there would be a single timeframe and single recipient). For these reasons, and because NMFS believes that the benefits of the flexibility afforded to affected entities by this alternative would be minor, this alternative is not preferred.

With respect to element (3), observer coverage for transshipments at sea, NMFS has not identified any alternatives that would be less burdensome than the proposed requirement and that would accomplish the objectives of the WCPFC Implementation Act. The only action alternative considered for this element is the alternative being proposed in this rule.

With respect to element (4), restrictions on vessels with which transshipping and bunkering may be conducted, NMFS has not identified any alternatives that would be less burdensome than the proposed requirement and that would accomplish the objectives of the WCPFC Implementation Act. The only action alternative considered for this element is the alternative being proposed in this rule.

With respect to element (5), notice of entry or exit for Eastern SMA, NMFS has not identified any alternatives that would be less burdensome than the proposed requirement and that would accomplish the objectives of the WCPFC Implementation Act. The only action

alternative considered for this element is the alternative being proposed in this rule.

With respect to element (6), the purse seine discard report, NMFS has not identified any alternatives that would be less burdensome than the proposed requirement and that would accomplish the objectives of the WCPFC Implementation Act. The only action alternative considered for this element is the alternative being proposed in this rule.

With respect to element (7), net-sharing restrictions and reporting, one alternative would be to allow U.S. to net-share to foreign-flagged vessels, and a second would be to allow U.S. vessels to net-share both to and from foreign vessels. Under both these alternatives, net-sharing would be allowed only on the last set. Alternatives to allow net-sharing on other than the last set would not be consistent with WCPFC decisions, so were not considered. Both alternatives identified above would be less restrictive than the proposed rule and thus bring lower compliance costs. The first alternative would make it difficult to ensure consistent counting of catches—for example, the shared catch might be logged as catch by both the U.S. catcher vessel and the foreign vessel with which the catch is shared. The alternative is not preferred for that reason. The second alternative would have the same shortcoming and would also be very difficult to enforce, as the United States would have limited ability to determine whether a foreign vessel complied with the last-set condition. The alternative is not preferred for those reasons.

For each element, NMFS also considered the no-action alternative, or status quo situation in which the provisions of the proposed rule would not be implemented. However, as stated above, the no-action alternative would not accomplish the objectives of the WCPFC Implementation Act and was rejected for that reason.

#### *Paperwork Reduction Act*

This proposed rule contains collection-of-information requirements subject to review and approval by the OMB under the PRA. These requirements have been submitted to the OMB for approval. The public reporting burdens for each of the requirements are estimated as follows: Transshipment reporting: 60 minutes per response, on average; prior notice for high seas transshipments and emergency transshipments: 15 minutes per response, on average; pre-trip notification for the purpose of deploying observers: 1 minute per response, on

average; notice of entry or exit for Eastern SMA: 15 minutes per response, on average; purse seine discard report: 30 minutes per response, on average. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the proposed collection of information to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES**), and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202-395-7285.

This proposed rule also contains a collection-of-information requirement subject to the PRA that has been approved by OMB under control number 0648-0218, "South Pacific Tuna Act" (the net-sharing reporting requirement). The public reporting burden for the Catch Report Form under that collection-of-information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES**) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### **List of Subjects in 50 CFR Part 300**

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

Dated: February 9, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

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

Authority: 16 U.S.C. 6901 *et seq.*

2. In § 300.211, definitions of “Cooperating Non-Member,” “Eastern High Seas Special Management Area,” “Net sharing,” “On board,” “WCPFC Interim Register of non-Member Carrier and Bunker Vessels,” and “WCPFC Record of Fishing Vessels” are added, in alphabetical order, and the definition of “Transshipment” is revised, to read as follows:

**§ 300.211 Definitions.**

\* \* \* \* \*

*Cooperating Non-Member* means a non-Member of the Commission that has been accorded Cooperating Non-Member status by the Commission at the Commission’s most recent annual meeting.

*Eastern High Seas Special Management Area* means the area of the high seas within the area bounded by the four lines connecting, in the most direct fashion, the coordinates specified as follows: 11° S. latitude and 161° W. longitude; 11° S. latitude and 154° W. longitude; 16° S. latitude and 154° W. longitude; and 16° S. latitude and 161° W. longitude.

\* \* \* \* \*

*Net sharing* means the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one vessel to another fishing vessel. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel.

\* \* \* \* \*

*Transshipment* means the unloading of fish from on board one fishing vessel and its direct transfer to, and loading on board, another fishing vessel, either at sea or in port. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel. Net sharing is not a transshipment.

\* \* \* \* \*

*WCPFC Interim Register of Non-Member Carrier and Bunker Vessels*

means, for the purposes of this subpart, the WCPFC Interim Register of non-Member Carrier and Bunker Vessels as established in the decisions of the WCPFC and maintained on the WCPFC’s Web site at <http://www.wcpfc.int/>.

\* \* \* \* \*

*WCPFC Record of Fishing Vessels* means, for the purposes of this subpart, the WCPFC Record of Fishing Vessels as established in the decisions of the WCPFC and maintained on the WCPFC’s Web site at <http://www.wcpfc.int/>.

\* \* \* \* \*

3. Section 300.215 is revised to read as follows:

**§ 300.215 Observers.**

(a) *Applicability.* This section applies to the following categories of fishing vessels:

(1) Any fishing vessel of the United States with a WCPFC Area Endorsement.

(2) Any fishing vessel of the United States for which a WCPFC Area Endorsement is required.

(3) Any fishing vessel of the United States used for commercial fishing that receives or offloads in the Convention Area a transshipment of HMS at sea.

(b) *Notifications.* The owner or operator of a vessel required to carry a WCPFC observer under § 300.215(d) during a given fishing trip must ensure the provision of notice to the Pacific Islands Regional Administrator at least 72 hours (exclusive of weekends and Federal holidays) before the vessel leaves port on the fishing trip, indicating the need for an observer. The notice must be provided to the office or telephone number designated by the Pacific Islands Regional Administrator and must include the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and a telephone number at which the owner, operator, or a designated agent may be contacted during the business day (8 a.m. to 5 p.m. Hawaii Standard Time). If applicable, notice may be provided in conjunction with the notice required under § 665.803(a) of this title.

(c) *Accommodating observers.* (1) Fishing vessels specified in paragraphs (a)(1) and (a)(2) of this section must carry, when directed to do so by NMFS, a WCPFC observer on fishing trips during which the vessel at any time enters or is within the Convention Area. The operator and each member of the crew of the fishing vessel shall act in accordance with paragraphs (c)(3),

(c)(4), and (c)(5) of this section with respect to any WCPFC observer.

(2) Fishing vessels specified in paragraph (a)(3) of this section must carry an observer when required to do so under § 300.215(d). The operator and each member of the crew of the fishing vessel shall act in accordance with paragraphs (c)(3), (c)(4), and (c)(5) of this section with respect to any WCPFC observer.

(3) The operator and crew shall allow and assist WCPFC observers to:

(i) Embark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator;

(ii) Have access to and use of all facilities and equipment as necessary to conduct observer duties, including, but not limited to: Full access to the bridge, the fish on board, and areas which may be used to hold, process, weigh and store fish; full access to the vessel’s records, including its logs and documentation, for the purpose of inspection and copying; access to, and use of, navigational equipment, charts and radios; and access to other information relating to fishing;

(iii) Remove samples;

(iv) Disembark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator; and

(v) Carry out all duties safely.

(4) The operator shall provide the WCPFC observer, while on board the vessel, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel, at no expense to the WCPFC observer.

(5) The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass or interfere with WCPFC observers in the performance of their duties, or attempt to do any of the same.

(d) *Transshipment observer coverage—*(1) *Receiving vessels.* Any fishing vessel of the United States used for commercial fishing that receives in the Convention Area a transshipment of HMS at sea must have a WCPFC observer on board during such transshipment unless at least one of the following sets of conditions applies:

(i) The vessel is less than or equal to 33 meters in registered length, the transshipment does not include any fish caught by purse seine gear, the transshipment does not include any frozen fish caught by longline gear, and, during the transshipment, there is a WCPFC observer on board the vessel that offloads the transshipment;

(ii) Prior to January 1, 2013, the vessel is greater than 33 meters in registered length and the transshipment is only of fish caught by troll gear and/or pole-and-line gear;

(iii) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught in such waters; or

(iv) The transshipment is an emergency, as specified under § 300.216(b)(4).

(2) *Offloading vessels.* Any fishing vessel of the United States used for commercial fishing that offloads a transshipment of HMS at sea in the Convention Area must have a WCPFC observer on board, unless one or more of the following conditions apply:

(i) The vessel that receives the transshipment has a WCPFC observer on board;

(ii) The vessel that receives the transshipment is greater than 33 meters in registered length;

(iii) The transshipment includes fish caught by purse seine gear;

(iv) The transshipment includes frozen fish caught by longline gear;

(v) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught in such waters; or

(vi) The transshipment is an emergency, as specified under § 300.216(b)(4).

(e) *Related observer requirements.* Observers deployed by NMFS pursuant to regulations issued under other statutory authorities on vessels used for fishing for HMS in the Convention Area will be deemed by NMFS to have been deployed pursuant to this section.

4. Section 300.216 is revised to read as follows:

**§ 300.216 Transshipping, bunkering and net sharing.**

(a) *Transshipment monitoring.*

[Reserved]

(b) *Restrictions on transshipping and bunkering.*

(1) *Restrictions on transshipments involving purse seine fishing vessels.*

(i) Fish may not be transshipped from a fishing vessel of the United States equipped with purse seine gear at sea in the Convention Area, and a fishing vessel of the United States may not be used to receive a transshipment of fish from a fishing vessel equipped with

purse seine gear at sea in the Convention Area.

(ii) Fish caught in the Convention Area may not be transshipped from a fishing vessel of the United States equipped with purse seine gear at sea, and a fishing vessel of the United States may not be used to receive a transshipment of fish caught in the Convention Area from a fishing vessel equipped with purse seine gear at sea.

(2) *Restrictions on at-sea transshipments.* If a transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters, this paragraph does not apply.

(i) The owner and operator of a fishing vessel of the United States used for commercial fishing that offloads or receives a transshipment of HMS at sea in the Convention Area must ensure that a WCPFC observer is on board at least one of the vessels involved in the transshipment for the duration of the transshipment, unless the vessel receiving the transshipment is subject to the provisions of § 300.215(d)(1)(ii).

(ii) A fishing vessel of the United States used for commercial fishing that receives transshipments of HMS at sea in the Convention Area shall not receive such transshipments from more than one vessel at a time unless there is a separate WCPFC observer available on either the offloading or receiving vessel to monitor each additional transshipment.

(3) *General restrictions on transshipping and bunkering—*

(i) *Transshipment.* Only fishing vessels that are authorized to be used for fishing in the EEZ may engage in transshipment in the EEZ. Any fishing vessel of the United States used for commercial fishing shall not be used to offload or receive a transshipment of HMS in the Convention Area unless:

(A) The other vessel involved in the transshipment is flagged to a Member or Cooperating Non-Member of the Commission;

(B) The other vessel involved in the transshipment is on the WCPFC Record of Fishing Vessels;

(C) The other vessel involved in the transshipment is on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels; or

(D) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and

only includes fish caught within such waters.

(ii) *Bunkering, supplying and provisioning.* Only fishing vessels that are authorized to be used for fishing in the EEZ may engage in bunkering in the EEZ. A fishing vessel of the United States used for commercial fishing for HMS shall not be used to provide bunkering, to receive bunkering, or to exchange supplies or provisions with another vessel in the Convention Area unless:

(A) The other vessel involved in the bunkering or exchange of supplies or provisions is flagged to a Member or a Cooperating Non-Member of the Commission;

(B) The other vessel involved in the bunkering or exchange of supplies or provisions is on the WCPFC Record of Fishing Vessels; or

(C) The other vessel involved in the bunkering or exchange of supplies or provisions is on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels.

(4) *Emergency transshipments.* The restrictions in paragraphs (b)(1), (b)(2), and (b)(3)(i) of this section shall not apply to a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage.

(c) *Net sharing restrictions.* (1) The owner and operator of a fishing vessel of the United States shall not conduct net sharing in the Convention Area unless all of the following conditions are met:

(i) The vessel transferring the fish is a fishing vessel of the United States equipped with purse seine gear;

(ii) The vessel transferring the fish has insufficient well space for the fish;

(iii) The vessel transferring the fish engages in no additional purse seine sets during the remainder of the fishing trip; and

(iv) The vessel accepting the fish is a fishing vessel of the United States equipped with purse seine gear.

(2) Only fishing vessels of the United States that are authorized to be used for fishing in the EEZ may engage in net sharing in the EEZ, subject to the provisions of paragraph (c)(1) of this section.

5. In § 300.218, paragraph (b) is revised and paragraphs (c), (d), (e) and (f) are added to read as follows:

**§ 300.218 Reporting and recordkeeping requirements.**

\* \* \* \* \*

(b) *Transshipment reports.* The owner and operator of any fishing vessel of the



United States used for commercial fishing that offloads or receives a transshipment of HMS in the Convention Area, or a transshipment anywhere of HMS caught in the Convention Area, must ensure that a transshipment report for the transshipment is completed, using a form that is available from the Pacific Islands Regional Administrator, and recording all the information specified on the form. The owner and operator of the vessel must ensure that the transshipment report is completed and signed within 24 hours of the completion of the transshipment, and must ensure that the report is submitted as follows:

(1) For vessels licensed under § 300.32, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified at § 300.34(c)(2) for submitting the transshipment logsheet form to the Administrator as defined at § 300.31.

(2) For vessels registered for use under § 660.707 of this title, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified for the logbook form at § 660.708 of this title.

(3) For vessels subject to the requirements of § 665.14(c) and § 665.801(e) of this title, and not subject to the requirements of paragraphs (b)(1) or (b)(2) of this section, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified at § 665.14(c) of this title for submitting transshipment logbooks to the Pacific Islands Regional Administrator for landings of western Pacific pelagic management unit species.

(4) For all transshipments on the high seas and emergency transshipments that meet the conditions described in § 300.216(b)(4), including transshipments involving the categories of vessels specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section, the report is submitted by fax or email to the address specified by the Pacific Islands Regional Administrator no later than 10 calendar days after completion of the transshipment. The report may be submitted with or without signatures so long as the original transshipment report with signatures is submitted to the address specified by the Pacific Islands Regional Administrator no later than 15 calendar days after the vessel first enters into port or 15 calendar days after completion of the transshipment for emergency transshipments in port.

(5) For all other transshipments at sea, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator no later than 72 hours after the vessel first enters into port.

(6) For all other transshipments in port, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator no later than 72 hours after completion of the transshipment.

(c) *Exceptions to transshipment reporting requirements.* Paragraph (b) of this section shall not apply to a transshipment that takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters.

(d) *Transshipment notices*—(1) *High seas transshipments.* The owner and operator of a fishing vessel of the United States used for commercial fishing that offloads or receives a transshipment of HMS on the high seas in the Convention Area, or a transshipment of HMS caught in the Convention Area anywhere on the high seas, and not subject to the requirements of paragraph (d)(2) of this section, must ensure that a notice is submitted to the Commission by fax or email at least 36 hours prior to the start of such transshipment at the address specified by the Pacific Islands Regional Administrator, and that a copy of that notice is submitted to NMFS at the address specified by the Pacific Islands Regional Administrator at least 36 hours prior to the start of the transshipment. The notice must be reported in the format provided by the Pacific Islands Regional Administrator and must contain the following information:

(i) The name of the offloading vessel.

(ii) The vessel identification markings located on the hull or superstructure of the offloading vessel.

(iii) The name of the receiving vessel.

(iv) The vessel identification markings located on the hull or superstructure of the receiving vessel.

(v) The expected amount, in metric tons, of fish product to be transshipped, broken down by species and processed state.

(vi) The expected date or dates of the transshipment.

(vii) The expected location of the transshipment, including latitude and longitude to the nearest tenth of a degree.

(viii) An indication of which one of the following areas the expected transshipment location is situated: high seas inside the Convention Area; high

seas outside the Convention Area; or an area under the jurisdiction of a particular nation, in which case the nation must be specified.

(ix) The expected amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: inside the Convention Area, on the high seas; outside the Convention Area, on the high seas; and within areas under the jurisdiction of particular nations, with each such nation and the associated amount specified. This information is not required if the reporting vessel is the receiving vessel.

(2) *Emergency transshipments.* The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS that offloads or receives a transshipment of HMS in the Convention Area, or a transshipment of HMS caught in the Convention Area anywhere, that is allowed under § 300.216(b)(4) but would otherwise be prohibited under the regulations in this subpart, must ensure that a notice is submitted by fax or email to the Commission at the address specified by the Pacific Islands Regional Administrator and a copy is submitted to NMFS at the address specified by the Pacific Islands Regional Administrator within twelve hours of the completion of the transshipment. The notice must be reported in the format provided by the Pacific Islands Regional Administrator and must contain the following information:

(i) The name of the offloading vessel.

(ii) The vessel identification markings located on the hull or superstructure of the offloading vessel.

(iii) The name of the receiving vessel.

(iv) The vessel identification markings located on the hull or superstructure of the receiving vessel.

(v) The expected or actual amount, in metric tons, of fish product transshipped, broken down by species and processed state.

(vi) The expected or actual date or dates of the transshipment.

(vii) The expected or actual location of the transshipment, including latitude and longitude to the nearest tenth of a degree.

(viii) An indication of which one of the following areas the expected or actual transshipment location is situated: high seas inside the Convention Area; high seas outside the Convention Area; or an area under the jurisdiction of a particular nation, in which case the nation must be specified.

(ix) The amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: inside the Convention Area, on the high seas; outside the Convention Area, on

the high seas; and within areas under the jurisdiction of particular nations, with each such nation and the associated amount specified. This information is not required if the reporting vessel is the receiving vessel.

(x) The reason or reasons for the emergency transshipment (i.e., a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage).

(3) *Location of high seas and emergency transshipments.* A high seas or emergency transshipment in the Convention Area or of HMS caught in the Convention Area anywhere subject to the notification requirements of paragraph (d)(1) or (d)(2) must take place within 24 nautical miles of the location for the transshipment indicated in the notice submitted under paragraph (d)(1)(vii) or (d)(2)(vii) of this section.

(e) *Purse seine discard reports.* The owner and operator of any fishing vessel of the United States equipped with purse seine gear must ensure that a report of any at-sea discards of any bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*) caught in the Convention Area is completed, using a form that is available from the Pacific Islands Regional Administrator, and recording all the information specified on the form. The report must be submitted within 48 hours after any discard to the Commission by fax or email at the address specified by the Pacific Islands Regional Administrator. A copy of the report must be submitted to NMFS at the address specified by the Pacific Islands Regional Administrator by fax or email within 48 hours after any such discard. A hard copy of the report must be provided to the observer on board the vessel, if any.

(f) *Net sharing reports—(1) Transferring vessels.* The owner and operator of a fishing vessel of the United States equipped with purse seine gear that transfers fish to another fishing vessel equipped with purse seine gear under § 300.216(c) shall ensure that the amount, by species, of fish transferred, as well as the net sharing activity, is recorded on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator.

(2) *Accepting vessels.* The owner and operator of a fishing vessel of the United States equipped with purse seine gear that accepts fish from another purse seine fishing vessel under § 300.216(c)

shall ensure that the net sharing activity is recorded on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator.

6. In § 300.222, paragraph (y) is revised and paragraphs (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm) (nn), (oo), (pp), and (qq) are added to read as follows:

**§ 300.222 Prohibitions.**

(y) Discard fish at sea in the Convention Area in contravention of § 300.223(d).

(ee) Fail to carry on board a WCPFC observer during a transshipment at sea, as required in § 300.215(d).

(ff) Offload, receive, or load fish caught in the Convention Area from a purse seine vessel at sea in contravention of § 300.216.

(gg) Fail to ensure that a WCPFC observer is on board at least one of the vessels involved in the transshipment for the duration of the transshipment in contravention of § 300.216(b)(2)(i), except as specified at § 300.216(b)(4).

(hh) Receive transshipments from more than one fishing vessel at a time in contravention of § 300.216(b)(2)(ii), except as specified at § 300.216(b)(4).

(ii) Transship to or from another vessel, in contravention of § 300.216(b)(3)(i), except as specified at § 300.216(b)(4).

(jj) Provide bunkering, receive bunkering, or exchange supplies or provisions with another vessel, in contravention of § 300.216(b)(3)(ii).

(kk) Engage in net sharing except as specified under § 300.216(c).

(ll) Fail to submit, or ensure submission of, a transshipment report as required in § 300.218(b), except as specified under § 300.218(c).

(mm) Fail to submit, or ensure submission of, a transshipment notice as required in § 300.218(d).

(nn) Transship more than 24 nautical miles from the location indicated in the transshipment notice, in contravention of § 300.218(d)(3).

(oo) Fail to submit, or ensure submission of, a discard report as required in § 300.218(e).

(pp) Fail to submit, or ensure submission of, a net sharing report as required in § 300.218(f).

(qq) Fail to submit, or ensure submission of, an entry or exit notice for the Eastern High Seas Special Management Area as required in § 300.225.

7. In § 300.223, paragraph (d)(3) introductory text is revised to read as follows:

**§ 300.223 Purse seine fishing restrictions.**

\* \* \* \* \*

(d) \* \* \*  
(3) An owner and operator of a fishing vessel of the United States equipped with purse seine gear must ensure the retention on board at all times while at sea within the Convention Area any bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*), except in the following circumstances and with the following conditions:

8. Section 300.225 is added to read as follows:

**§ 300.225 Eastern High Seas Special Management Area.**

(a) *Entry notices.* The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must ensure the submission of a notice to the Commission at the address specified by the Pacific Islands Regional Administrator by fax or email at least six hours prior to entering the Eastern High Seas Special Management Area. The owner or operator must ensure the submission of a copy of the notice to NMFS at the address specified by the Pacific Islands Regional Administrator by fax or email at least six hours prior to entering the Eastern High Seas Special Management Area. The notice must be submitted in the format specified by the Pacific Island Regional Administrator and must include the following information:

(1) The vessel identification markings located on the hull or superstructure of the vessel;

(2) Date and time (in UTC) of anticipated point of entry;

(3) Latitude and longitude, to nearest tenth of a degree, of anticipated point of entry;

(4) Amount of fish product on board at the time of the notice, in kilograms, in total and for each of the following species or species groups: yellowfin tuna, bigeye tuna, albacore, skipjack tuna, swordfish, shark, other; and

(5) An indication of whether the vessel intends to engage in any transshipments prior to exiting the Eastern High Seas Special Management Area.

(b) *Exit notices.* The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must ensure the submission of a notice to the Commission at the address specified by the Pacific Islands Regional Administrator by fax or email no later than six hours prior to exiting the Eastern High Seas Special Management Area. The owner or operator must ensure the submission of a copy of the notice to NMFS at the address specified

by the Pacific Islands Regional Administrator by fax or email no later than six hours prior to exiting the Eastern High Seas Special Management Area. The notices must be submitted in the format specified by the Pacific Island Regional Administrator and must include the following information:

(1) The vessel identification markings located on the hull or superstructure of the vessel.

(2) Date and time (in UTC) of anticipated point of exit.

(3) Latitude and longitude, to nearest tenth of a degree, of anticipated point of exit.

(4) Amount of fish product on board at the time of the notice, in kilograms, in total and for each of the following species or species groups: yellowfin tuna, bigeye tuna, albacore, skipjack tuna, swordfish, shark, other; and

(5) An indication of whether the vessel has engaged in or will engage in any transshipments prior to exiting the Eastern High Seas Special Management Area.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 120201086-2085-01]

RIN 0648-XA904

#### Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2012 Atlantic Bluefish Specifications

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

**ACTION:** Proposed specifications; request for comments.

**SUMMARY:** NMFS proposes specifications for the 2012 Atlantic bluefish fishery, including an annual catch limit, total allowable landings, a commercial quota and recreational harvest limit, and a recreational possession limit. The intent of this action is to establish the allowable 2012 harvest levels and other management measures to achieve the target fishing mortality rate, consistent with the Atlantic Bluefish Fishery Management Plan.

**DATES:** Comments must be received on or before March 1, 2012.

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2012-0003, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking portal: <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the "Submit a Comment" icon, then enter NOAA-NMFS-2012-0003 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- **Fax:** (978) 281-9135, Attn: Comments on 2012 Proposed Bluefish Specifications, NOAA-NMFS-2012-0003.

- **Mail and Hand Delivery:** Dan Morris, Acting Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2012 Bluefish Specifications."

**Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at: <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Carly Bari, Fishery Management Specialist, (978) 281-9224.

**SUPPLEMENTARY INFORMATION:**

## Background

The Atlantic bluefish fishery is managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish specified in the Atlantic Bluefish Fishery Management Plan (FMP) is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. The regulations requiring annual specifications are found at § 648.16.

The FMP requires the Council to recommend, on an annual basis, annual catch limit (ACL), annual catch target (ACT), and total allowable landings (TAL) that will control fishing mortality (F). An estimate of annual discards is deducted from the ACT to calculate the TALs that can be harvested during the year by the commercial and recreational fishing sectors. The FMP requires that 17 percent of the ACT be allocated to the commercial fishery, with the remaining 83 percent allocated to the recreational fishery. The Council may also recommend a research set-aside (RSA) quota, which is deducted from the bluefish TALs (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors.

The annual review process for bluefish requires that the Council's Bluefish Monitoring Committee and Scientific and Statistical Committee (SSC) review and make recommendations based on the best available data, including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee and SSC, the Council makes a recommendation to the NMFS Northeast Regional Administrator. Because this FMP is a joint plan, the Commission also meets during the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to ensure that they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**, and after considering public comment, NMFS will publish final specifications in the **Federal Register**.