

Number of Petitions Filed: 2.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 150929898-5951-01]

RIN 0648-XE001; 0648-BF41

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Treatment of U.S. Purse Seine Fishing With Respect to U.S. Territories

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

ACTION: Notice of decision on petition for rulemaking; advance notice of proposed rulemaking; request for comments.

SUMMARY: This document includes two distinct but related NMFS actions. First, NMFS announces that it has denied a petition for rulemaking from Tri Marine Management Company, LLC, related to purse seine fishing effort limits in the area of competence of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission). Second, NMFS issues an advance notice of proposed rulemaking related to the treatment of U.S.-flagged purse seine vessels and their fishing activities in regulations implementing decisions of the Commission.

DATES: Comments on this advance notice of proposed rulemaking must be submitted in writing by November 23, 2015.

ADDRESSES: The notice of receipt of the petition for rulemaking, the petition, and the public comments on the petition are available via the Federal e-Rulemaking Portal at www.regulations.gov (search for Docket ID NOAA-NMFS-2015-0088).

NMFS is not requesting comments on the notice of decision on the petition.

You may submit comments on the advance notice of proposed rulemaking, identified by NOAA-NMFS-2015-0128, by either of the following methods:

- **Electronic submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov/
#!docketDetail;D=NOAA-NMFS-2015-0128,

2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

- **Mail:** Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808-725-5032.

SUPPLEMENTARY INFORMATION:

Background on the Convention

The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention) focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO. To accomplish this objective, the Convention established the Commission, which includes Members, Cooperating Non-members, and Participating Territories. The United States of America is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States implements domestically conservation and management measures adopted by the Commission and other decisions of the Commission. The Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*; WCPFC Implementation Act), 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 Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC Web site at: www.wcpfc.int/doc/convention-area-map.

Background on Purse Seine Fishing Effort Limits in the Convention Area

Since 2009, NMFS regulations have established limits on fishing effort by U.S. purse seine fishing vessels in the area of application of the Convention (Convention Area), including in the area known as the Effort Limit Area for Purse Seine, or ELAPS, which is comprised of all areas of high seas and the U.S. exclusive economic zone (EEZ) between the latitudes of 20° N. and 20° S. in the Convention Area. These regulations are promulgated under authority of the WCPFC Implementation Act and have been codified at 50 CFR 300.223(a).

NMFS has established the purse seine fishing effort limits in the ELAPS to implement a series of Commission decisions for tropical tuna stocks in the Convention Area.

NMFS established a purse seine fishing effort limit in the ELAPS for 2015 in an interim rule published May 21, 2015 (80 FR 29220). NMFS issued a final rule, responding to comments on the interim rule and making final the interim rule, on August 25, 2015 (80 FR 51476). The limit is 1,828 fishing days.

On June 8, 2015, NMFS issued a notice announcing that the U.S. purse seine fishery in the ELAPS would close as a result of reaching the limit of 1,828 fishing days (80 FR 32313). The closure took effect June 15, 2015, and will remain in effect through December 31, 2015. The closure applies to all U.S. purse seine fishing vessels. During the closure, fishing vessels of the United

States equipped with purse seine gear may not be used to fish in the ELAPS.

Petition for Rulemaking

Under the Administrative Procedure Act, interested persons may petition Federal agencies for the issuance, amendment, or repeal of a rule.

As described further below, NMFS received such a petition from Tri Marine Management Company, LLC (Tri Marine). On July 17, 2015, NMFS issued a notice of receipt of the petition and a request for comments on the petition (80 FR 42464). The comment period ended August 17, 2015.

The Petition

In a petition dated May 12, 2015, Tri Marine requested that NMFS take two actions. First, Tri Marine requested that “NOAA undertake an emergency rulemaking with respect to the 2015 ELAPS limits for fishing days on the high seas.” Second, Tri Marine requested that “NOAA issue a rule exempting from that high seas limit any US flag purse seine vessel which, pursuant to contract or declaration of intent, delivers or will deliver at least 50 percent of its catch to tuna processing facilities based in American Samoa.”

At the time of Tri Marine’s initial request, NMFS was preparing to issue an interim rule establishing a limit on purse seine fishing effort in the ELAPS for 2015. As described above, NMFS established a limit in the ELAPS for 2015 in an interim rule published May 21, 2015. Accordingly, the first part of Tri Marine’s request has been fully addressed and is not further discussed in this notice. NMFS acknowledged that it had received Tri Marine’s petition for rulemaking in the May 21, 2015, interim rule, and stated that it would consider and respond to the petition separately.

With regard to the second part of Tri Marine’s request, the petition explains that as a result of decisions by the Republic of Kiribati, U.S. purse seine vessels’ access to their traditional fishing grounds in 2015 has been dramatically reduced, and that the high seas portion of the ELAPS can be expected to be closed to fishing as early as June. The petition further states that because of the limited fishing grounds now available to the American Samoa-based purse seine fleet and other factors, including an unusually low tuna price and the higher cost of access to fishing grounds in the region, the ability of American Samoa-based tuna vessels to operate profitably is in serious question, and the loss of a reliable supply of tuna from these vessels will jeopardize the ability of the canneries in American Samoa to compete in world markets.

The petition states that under the Convention, American Samoa is afforded special treatment as a small island developing state or participating territory for purposes of applying conservation and management measures of the Commission, and therefore NMFS should develop rules that exempt from the ELAPS limit those vessels that deliver at least 50 percent of their catch to the canneries in American Samoa.

The petition includes further information on the basis of the request, including information related to the recommendations of the Governor of American Samoa’s Fisheries Task Force, and an “issue brief” with statements about the nature of the issue and how the requested rule(s) would address it.

In a second letter to NMFS dated May 26, 2015, which supplements the May 12, 2015, petition, Tri Marine acknowledged the interim rule published May 21, 2015, and amended its request to include the U.S. EEZ. Tri Marine requested that “NOAA undertake an emergency rulemaking with respect to the 2015 ELAPS limits for fishing days (both) on the high seas and in the US EEZ,” and further requested that “NOAA issue a rule exempting from the ELAPS limits any US flag purse seine vessel which, pursuant to contract or declaration of intent, delivers or will deliver at least 50 percent of its catch to tuna processing facilities based in American Samoa.”

Public Comments on the Petition

NMFS received comments on the petition from about 100 parties, including individuals employed in fish processing facilities in American Samoa and their families and friends; owners, operators and crew members of U.S. purse seine vessels; owners and operators of fish processing facilities in American Samoa; other businesses doing business in American Samoa; non-governmental organizations; and government officials of American Samoa and the United States. Most comments were in favor of the petition. Those in favor cited what they believed are adverse economic impacts of the 2015 ELAPS limit on purse seine fishing businesses, on fish processing facilities and other businesses in American Samoa, on employment in those businesses, and on the American Samoa economy in general. The comments in opposition to the petition argued that the requested action would unfairly favor certain businesses in the U.S. purse seine fishery over others and would be inconsistent with the Convention and the decisions of the Commission.

Decision on the Petition

After considering the petition and the public comments on the petition, NMFS finds that it is not appropriate to grant the petitioner’s request to issue a rule exempting from the 2015 ELAPS limit any U.S.-flagged purse seine vessel which, pursuant to contract or declaration of intent, delivers or will deliver at least 50 percent of its catch to tuna processing facilities based in American Samoa. As described in the regulatory impact review prepared for the rule to establish the 2015 ELAPS limit, NMFS found that the limit is expected to have substantial adverse economic impacts on U.S. purse seine fishing businesses in the WCPO, and also that adverse impacts in terms of income and employment could occur in business sectors with backward and forward linkages to the producers. These sectors could include businesses that supply the purse seine fishing vessels, and the fish processing facilities in American Samoa. However, to sufficiently assess whether such impacts, or other circumstances, warrant the regulatory action requested by the petition would require additional information that is not readily available to NMFS, as well as sufficient time to examine such information. In particular, NMFS does not have information that demonstrates that the 2015 ELAPS limit will adversely impact American Samoa’s fish processing facilities and its economy in the manner alleged by the petitioner. The petitioner argues that lacking the requested regulatory action, the ability of the American Samoa-based purse seine fleet to operate profitably would be in serious question, and the loss of a reliable supply of tuna from those vessels would jeopardize the ability of the canneries in American Samoa to compete in world markets with lower-cost competitors, and further, that tuna landings and processing are essential to the overall economic health of American Samoa.

NMFS has received some relevant information in the public comments on the petition, and NMFS intends to collect additional economic and other information. However, NMFS does not yet have sufficient information to determine whether the 2015 ELAPS limit is likely to jeopardize the ability of the American Samoa canneries to compete in world markets, or to determine how the loss of such competitiveness would affect American Samoa’s overall economy. Moreover, if the 2015 ELAPS limit is found to impact American Samoa’s fish processing facilities and its economy in the manner alleged in the petition, NMFS would

need to determine whether the requested action is appropriate to address the problem, and further, whether it can be implemented consistent with U.S. obligations under the Convention and other applicable laws. NMFS does not expect that collecting and analyzing the necessary information, determining the appropriate course of action, if any, and completing such action could be accomplished before the end of 2015. For this reason, NMFS denies the second part of Tri Marine's petition for rulemaking.

Although NMFS has denied the petition, NMFS acknowledges that some of the issues raised in the petition warrant further examination. As described in the following section, NMFS intends to more fully examine the problems raised by the petitioner and by commenters on the petition. If the findings of that examination confirm a problem that—given U.S. obligations under the Convention and other applicable laws—warrants corrective action, NMFS would consider further rulemaking. At this time, however, NMFS cannot predict the timing or provisions of any future proposed or final rule.

Advance Notice of Proposed Rulemaking

Under the WCPFC Implementation Act, NMFS exercises broad discretion when determining how it implements

Commission decisions, such as purse seine fishing restrictions. NMFS intends to examine the potential impacts of the domestic implementation of Commission decisions for purse seine fisheries on the economies of the U.S. Participating Territories, and examine the connectivity between the activities of U.S.-flagged purse seine fishing vessels and the economies of the territories. Based on those findings, NMFS will consider proposing regulations that mitigate adverse economic impacts of purse seine fishing restrictions on the U.S. Participating Territories, to the extent consistent with U.S. obligations under the Convention. Also, NMFS is considering proposing regulations that recognize that in the context of the Convention, one or more of the U.S. Participating Territories have their own purse seine fisheries that are distinct from the purse seine fishery of the United States. In that case, the purse seine fisheries of the U.S. Participating Territories might be subject to special provisions of the Convention and of Commission decisions, and NMFS would implement those provisions and decisions accordingly.

NMFS notes that the Tri Marine petition focused on the 2015 ELAPS limit. This advanced notice of proposed rulemaking is broader in scope, and could apply to other types of restrictions on purse seine fishing that are adopted by the Commission.

In summary, NMFS provides notice that it is considering proposing a rule that would establish rules and/or procedures to address the treatment of U.S.-flagged purse seine vessels and their fishing activities and how they relate to the U.S. Participating Territories in regulations issued by NMFS that implement decisions of the Commission.

NMFS solicits comments on this advance notice of proposed rulemaking. NMFS is particularly interested in receiving any information that would be helpful in assessing the impacts of Commission decisions for purse seine fisheries—as implemented domestically—on the economies of the U.S. Participating Territories, and any information that demonstrates connections between the U.S. Participating Territories and U.S.-flagged purse seine vessels and their fishing activities.

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: October 19, 2015.

Eileen Sobeck,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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