DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 180209155–8399–01]

RIN 0648–BH77

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Limits in Purse Seine and Longline Fisheries, Restrictions on the Use of Fish Aggregating Devices in Purse Seine Fisheries, and Transshipment Prohibitions

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS seeks comments on this proposed rule issued under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act). The proposed rule would implement recent decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). These decisions include the following management measures: limits on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone and on the high seas between the latitudes of 20° N and 20° S 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); restrictions regarding the use of fish aggregating devices (FADs) for U.S. purse seine fishing vessels; limits on the catches of bigeye tuna by U.S. longline vessels in the Convention area; prohibitions on U.S. vessels used to fish for highly migratory species from engaging in transshipment in a particular area of the high seas (the Eastern High Seas Special Management Area or EHSSMA); and removal of existing reporting requirements for vessels transiting the EHSSMA. The rule also would make corrections to outdated cross references in existing regulatory text. This action is necessary to satisfy the obligations of the United States under the Convention, to which it is a Contracting Party.

DATES: Comments on the proposed rule must be submitted in writing by May 25, 2018.

ADDRESSES: You may submit comments on the proposed rule and the regulatory impact review (RIR) prepared for the proposed rule, identified by NOAA–NMFS–2018–0050, 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-2018-0050,*

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).

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

Copies of the RIR, the 2015 programmatic environmental assessment, and 2012 environmental assessment prepared for National Environmental Policy Act (NEPA) purposes are available at *www.regulations.gov* or may be obtained from Michael D. Tosatto, Regional Administrator, 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 PIRO at the address listed above and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808–725–5033.

SUPPLEMENTARY INFORMATION:

Background on the Convention

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

As a Contracting Party to the Convention and a Member of the Commission, the United States implements, as appropriate, conservation and management measures and other decisions adopted by the Commission. 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 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 website at: *www.wcpfc.int/doc/convention-area-map.*

Background on the Conservation and Management Measures

This proposed rule would implement specific provisions of two recent WCPFC decisions. The first decision, Conservation and Management Measure (CMM) 2017–01, ''Conservation and Management Measure for Bigeye,

Yellowfin, and Skipjack Tuna in the Western and Central Pacific Ocean,'' was adopted by the Commission at its fourteenth regular annual session, in December 2017, and went into effect February 2018. The provisions of CMM 2017–01 are described in more detail below. The second decision, CMM 2016–02, ''Conservation and Management Measures for Eastern High Seas Pocket Special Management Area,'' revises a previous measure regarding the EHSSMA so that vessels are no longer required to provide reports to the Commission when entering and exiting the EHSSMA and also prohibits all transshipment activities in the area starting on January 1, 2019.

CMM 2017–01 is the latest in a series of CMMs devoted to the conservation and management of tropical tuna stocks, particularly stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*). The stated purpose of CMM 2017–01 is to provide for a robust transitional management regime that ensures the sustainability of bigeye tuna, yellowfin tuna, and skipjack tuna in the WCPO pending the Commission's establishment of harvest strategies.

In order to achieve that stated purpose, CMM 2017–01 includes provisions for longline and purse seine vessels that would be implemented in this proposed rule. For longline vessels, the CMM includes specific bigeye tuna catch limits for several WCPFC members, including the United States. The CMM provides for a limit of 3,554 metric tons (mt) of bigeye tuna that may be caught by U.S. longline vessels fishing in the Convention Area for calendar year 2018, which is the same as the U.S. limit in 2016, as specified in earlier WCPFC decisions. As in previous WCPFC CMMs on tropical tunas, CMM 2017–01 also requires any overage of the catch limit to be deducted from the following year's limit.

Also as in previous CMMs, no limits apply to the longline fisheries of the U.S. Participating Territories of American Samoa, Guam, and CNMI. In addition, CMM 2017–01 includes a new provision for U.S. longline vessels, stating that catch and effort of U.S.-flagged vessels operating under agreements with the U.S. Participating Territories shall be attributed to the U.S. Participating Territories.

For purse seine vessels, CMM 2017–01 includes several restrictions on the use of FADs and provides for specific limits on fishing effort.

The first FAD restriction is similar to the one included in previous WCPFC decisions and requires purse seine vessels to be prohibited from fishing on FADs on the high seas and in the exclusive economic zones (EEZs) in the Convention Area between the latitudes of 20° N and 20° S from July 1 through September 30 of 2018. The second FAD restriction requires WCPFC members to establish an additional consecutive two-month FAD prohibition period on the high seas in the Convention Area in 2018, in either April and May or November and December. CMM 2017–01 also includes provisions encouraging WCPFC members to use non-entangling design and materials as well as biodegradable materials in the construction of FADs. Finally, CMM 2017–01 includes a provision requiring that each purse seine vessel have no more than 350 drifting FADs with activated instrumented buoys deployed at sea in the Convention Area at any one time through February 10, 2021. Under the CMM, an instrumented buoy is defined as a buoy with a clearly marked reference number allowing its identification and equipped with a satellite tracking system to monitor its position. The CMM states that the buoy shall be activated exclusively on board the vessel.

Under CMM 2017–01, WCPFC members must also limit their purse seine vessels to specific fishing effort limits. The limits on U.S. purse seine fishing effort detailed in CMM 2017–01 are similar to limits in previous WCPFC decisions. The limits are 558 fishing days in the U.S. EEZ and 1,270 fishing days on the high seas in the Convention Area between the latitudes of 20° N and 20° S for each of the calendar years 2018–2020. However, CMM 2017–01 also includes a new provision for 2018 only that allows the United States to transfer 100 fishing days from its limit in the U.S. EEZ to its limit on the high seas, and if the U.S. EEZ limit is reached by October 1, 2018, the U.S. EEZ limit will be increased by an additional 100 fishing days, with the expectation that the catch taken by U.S. flagged vessels and landed in American Samoa for the American Samoa canneries is no less than the volume landed in 2017 plus an additional 3,500 short tonnes. This new provision was intended to alleviate the economic hardship faced by American Samoa and its canneries when U.S. purse seine fishing limits are reached, resulting in fishery closures.

CMM 2017–01 also includes provisions for purse seine vessels that were in previous WCPFC decisions and that have been implemented by NMFS in regulations that continue in force. These provisions include requirements for purse seine vessels to retain all catch of bigeye tuna, yellowfin tuna, and skipjack tuna, for observer coverage on purse seine vessels, and for vessel monitoring system requirements for purse seine vessels during the FAD closure periods.

Proposed Action

The elements of the proposed rule are detailed below. The administrative changes that would be made to correct outdated references in existing regulatory text are described at the end.

As described above, some of the provisions in CMM 2017–01 apply only to calendar year 2018, while others are applicable until February 10, 2021. Because the Commission likely will continue to implement similar management measures regarding FADs, purse seine effort limits, and longline bigeye tuna catch limits beyond 2018, and to avoid a lapse in the management of the fishery, NMFS is proposing to implement all of the elements of CMM 2017–01 in this proposed rule under the authority of the WCPFC Implementation Act, 16 U.S.C. 6904(a), so that they will remain effective until they are replaced or amended. Because the Commission developed CMM 2017–01 as generally a three-year conservation and management measure (2018–2020), the supporting analyses for this rule covers a three-year time period, understanding that these analyses would need to be supplemented should the elements of the rule remain effective for more than three years.

Longline Bigeye Tuna Catch Limits

The Commission-adopted longline bigeye tuna catch limit for the United States for 2018 is 3,554 mt. As stated above, CMM 2017–01 reiterates the provision of earlier CMMs that states that any catch overage in a given year shall be deducted from the catch limit for the following year. The longline bigeye tuna catch limit for the United States in 2017 was 3,138 mt (see Interim Rule; 82 FR 36341, published August 4, 2017). Based on preliminary estimates, NMFS believes that the 2017 limit might have been exceeded, but the amount of the overage, if it occurred, is not yet known. Thus, NMFS is proposing a calendar year catch limit of 3,554 mt that would remain effective until replaced. However, for 2018, it is possible that this limit would be adjusted downward to account for any overage in 2017; the limit would similarly be adjusted downward in future years, should any overages occur. NMFS will determine the exact amount of the overage prior to publication of the final rule and include the exact amount of the 2018 limit in the final rule.

The calendar year longline bigeye tuna catch limit will apply only to U.S.-flagged longline vessels operating as part of the U.S. longline fisheries. The limit will not apply to U.S. longline vessels operating as part of the longline fisheries of American Samoa, CNMI, or Guam. Existing regulations at 50 CFR 300.224(b), (c), and (d) detail the manner in which longline-caught bigeye tuna is attributed among the fisheries of the United States and the U.S. Participating Territories.

Consistent with the basis for the limits prescribed in CMM 2017–01 and with regulations issued by NMFS to implement bigeye tuna catch limits in U.S. longline fisheries as described below, the catch limit is measured in terms of retained catches—that is, bigeye tuna that are caught by longline gear and retained on board the vessel.

1. Announcement of the Limit Being Reached

As set forth under the existing regulations at 50 CFR 300.224(e), if NMFS determines that the limit is expected to be reached in a calendar year, NMFS will publish a notice in the **Federal Register** to announce specific fishing restrictions that will be effective from the date the limit is expected to be reached until the end of the calendar year. NMFS will publish the notice of the restrictions at least 7 calendar days before the effective date to provide vessel owners and operators with advance notice. Periodic forecasts of the date the limit is expected to be reached will be made available to the public, such as by posting on a website, to help vessel owners and operators plan for the possibility of the limit being reached.

2. Restrictions After the Limit Is Reached

As set forth under the existing regulations at 50 CFR 300.224(f), if the limit is reached, the restrictions that will be in effect will include the following:

a. Retain on board, transship, or land bigeye tuna: Starting on the effective date of the restrictions and extending through December 31 of the given calendar year, it will be prohibited to use a U.S. fishing vessel to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear, except as follows:

First, any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions can be retained on board, transshipped, and/or landed, provided that they are landed within 14 days after the restrictions become effective. A vessel that had declared to NMFS pursuant to 50 CFR 665.803(a) that the current trip type is shallow-setting is not subject to this 14-day landing restriction, so these vessels will be able to land bigeye tuna more than 14 days after the restrictions become effective.

Second, bigeye tuna captured by longline gear can be retained on board, transshipped, and/or landed if they are caught by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit, or if they are landed in American Samoa, Guam, or CNMI. However, the bigeye tuna must not be caught in the portion of the U.S. EEZ surrounding the Hawaiian Archipelago, and must be landed by a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

Third, bigeye tuna captured by longline gear can be retained on board, transshipped, and/or landed if they are caught by a vessel that is included in a specified fishing agreement under 50 CFR 665.819(d), in accordance with 50 CFR 300.224(f)(iv).

b. Transshipment of bigeye tuna to certain vessels: Starting on the effective date of the restrictions and extending through December 31 of the calendar year, it will be prohibited to transship bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

c. Fishing inside and outside the Convention Area: To help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, two additional, related prohibitions would be in effect starting on the effective date of the restrictions and extending through December 31 of the calendar year. First, vessels are prohibited from fishing with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel still must land any bigeye tuna taken in the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a vessel is used to fish using longline gear outside the Convention Area and enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area, specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use. These two prohibitions do not apply to the following vessels: (1) Vessels on declared shallow-setting trips pursuant to 50 CFR 665.803(a); and (2) vessels operating for the purposes of this rule as part of the longline fisheries of American Samoa, Guam, or the CNMI. This second group includes vessels registered for use under valid American Samoa Longline Limited Access Permits and vessels landing their bigeye tuna catch in one of the three U.S. Participating Territories, so long as these vessels conduct fishing activities in accordance with the conditions described above, and vessels included in a specified fishing agreement under 50 CFR 665.819(d), in accordance with 50 CFR 300.224(f)(iv).

FAD Restrictions

In accordance with CMM 2017–01, NMFS proposes to establish a FAD prohibition period from July through September in each calendar year in the Convention Area between the latitudes of 20° N and 20° S (inclusive of the EEZs and high seas in the Convention Area). Regarding the additional consecutive two-month FAD prohibition period on the high seas in the Convention Area, after considering the objectives of CMM 2017–01, the expected economic impacts on U.S. fishing operations and the nation as a whole, and expected environmental and other effects, NMFS expects that a high seas FAD prohibition period in November and December may be somewhat more cost-effective than a FAD prohibition period in April and May. For this reason, NMFS is proposing to implement the high seas FAD prohibition period in November and December for each calendar year. We specifically seek public comment on which option is more appropriate. A comparison of the two options' expected direct economic impacts on affected fishing businesses is provided in the RIR.

As currently defined in 50 CFR 300.211, a FAD is ''any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any object used for that purpose that is situated on board a vessel or otherwise out of the water. The definition of FAD does not include a vessel.'' Under this proposed rule, the regulatory definition of a FAD would not change. Although the definition of a FAD does not include a vessel, the restrictions during the FAD

prohibition periods would include certain activities related to fish that have aggregated in association with a vessel, or drawn by a vessel, as described below.

The prohibitions applicable to these proposed FAD-related measures are in existing regulations at 50 CFR 300.223(b)(1)(i)–(v). Specifically, during the July-September FAD prohibition periods in each calendar year, and on the high seas in November and December, owners, operators, and crew of fishing vessels of the United States equipped with purse seine gear shall not do any of the following activities in the Convention Area in the area between 20° N latitude and 20° S latitude:

(1) Set a purse seine around a FAD or within one nautical mile of a FAD;

(2) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours, setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel;

(3) Deploy a FAD into the water;

(4) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that a FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and a FAD may be removed from the water and if removed may be cleaned, provided that it is not returned to the water.

(5) From a purse seine vessel or any associated skiffs, other watercraft or equipment, submerge lights under water; suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment, or direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew. These prohibitions would not apply during emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage.

This proposed rule would revise the introductory paragraph of 50 CFR 300.223(b)(1) to make it more clear that the prohibitions apply only to owners, operators, and crew of purse seine fishing vessels. NMFS has recently received inquiries as to whether the prohibitions apply to the owners, operators, and crew of vessels using other gear types. This proposed rule would also make a technical change to 50 CFR 300.223(b)(1)(iv)(B) to clarify that, during the FAD prohibition periods, a FAD may be removed from the water to be repaired, cleaned, maintained, or otherwise serviced, provided that it is not returned to the water. This minor change ensures consistency with the introductory language in that paragraph.

NMFS has recently issued final regulations to implement provisions of a resolution adopted by the Inter-American Tropical Tuna Commission (IATTC) that includes restrictions on the number of FADs with activated instrumented buoys for each purse seine vessel deployed at sea in the IATTC area at any one time (see Final Rule; 83 FR 15503, published April 11, 2018). In order to provide some consistency to the regulated community, NMFS is proposing similar regulations in this rule to implement the limit regarding FADs with activated instrumented buoys specified in CMM 2017–01.

Under the proposed rule, an active FAD is defined as a FAD that is equipped with a buoy with a clearly marked reference number allowing its identification and equipped with a satellite tracking system to monitor its position, as specified by the definition of instrumented buoy in CMM 2017–01.

CMM 2017–01 specifies that the buoy shall be activated exclusively on board the vessel. In order to implement this provision, the proposed rule specifies that the tracking equipment must be turned on while the FAD is onboard the vessel and before it is deployed in the water. In accordance with CMM 2017–01, under the proposed rule, each U.S. purse seine vessel would have a limit of 350 active drifting FADs in the Convention Area at any one time.

Purse Seine Fishing Effort Limits

In the past, NMFS has implemented the U.S. purse seine fishing effort limits on the high seas and in the U.S. EEZ adopted by the Commission as a single combined limit in a combined area of the high seas and U.S. EEZ termed the Effort Limit Area for Purse Seine or ELAPS. NMFS' reasoning for combining the high seas and U.S. EEZ limits was that it afforded more operational flexibility to the fleet and there are no substantial differences in terms of effects to living marine resources for treating the two areas separately or combined so long as the overall effort remained equal or less than the sum of the two limits. For this proposed rule, in light of CMM 2017–01's provision allowing the United States to transfer some of its EEZ days to the high seas, there is a need to separately account for the U.S. high seas limit and the U.S. EEZ limit. Thus, NMFS will no longer combine the two limits under a single limit. As stated above, CMM 2017–01 specifies a limit of 1,270 fishing days per year for the high seas and a limit of 558 fishing days per year for the U.S. EEZ. The proposed rule would establish a limit of 1,370 fishing days on the high seas and a separate limit of 458 fishing days in the U.S. EEZ. These numbers utilize the provision of CMM 2017–01 provided to alleviate the economic hardship experienced by American Samoa during a fishery closure and transfer 100 fishing days from the U.S. EEZ effort limit to the high seas effort limit.

CMM 2017–01 also specifies that the United States may add an additional 100 fishing days to its annual purse seine fishing effort limit in the U.S. EEZ if the limit in the U.S. EEZ is reached by October 1, 2018. As discussed above, NMFS is proposing to to implement the elements of the rule so they are effective until they are amended or replaced. Thus, under the proposed rule, when NMFS expects that the U.S. EEZ effort limit would be reached by October 1, NMFS would publish a notice in the **Federal Register**, no later than seven days prior to October 1, to increase the U.S. EEZ effort limit by 100 fishing days for that calendar year.

The meaning of ''fishing day'' is defined at 50 CFR 300.211; that is, any day in which a fishing vessel of the United States equipped with purse seine gear searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

NMFS will monitor the number of fishing days spent in the U.S. EEZ and on the high seas using data submitted in logbooks and other available information. If and when NMFS determines that a limit is expected to be reached by a specific future date, it will publish a notice in the **Federal Register** announcing that the purse seine fishery in the area where the limit is expected to be reached will be closed starting on a specific future date and will remain closed until the end of the calendar year. NMFS will publish that notice at least seven days in advance of the closure date. Starting on the announced closure date, and for the remainder of

calendar year, it will be prohibited for U.S. purse seine vessels to fish in the area where the limit is expected to be reached, except that such vessels would not be prohibited from bunkering (refueling) during a fishery closure. NMFS published an interim rule on August 25, 2015 (see 80 FR 51478) to remove the restriction that prohibited U.S. purse seine vessels from conducting bunkering during fishery closures of the ELAPS. NMFS is proposing to continue those regulations as part of this proposed rule so that bunkering would be allowed during any fishery closures of the U.S. EEZ or high seas due to reaching a limit in a given calendar year.

Under existing regulations at 50 CFR 300.218(g), NMFS can direct U.S. purse seine vessel owners and operators to provide daily FAD reports, specifying the number of purse seine sets made on FADs during that day. NMFS promulgated this regulation to help track a limit on the number of FAD sets that was applicable in previous years but recognizes that this information is also valuable to help predict when a fishing effort limit is expected to be reached with greater certainty. Thus, under this proposed rule, NMFS would revise the existing regulations so that NMFS can direct U.S. purse seine vessel owners and operators to provide reports on the fishing activity of the vessel (*e.g.,* setting, transiting, searching), location, and type of set, in order to obtain better data for tracking the fishing effort limits.

Eastern High Seas Special Management Area

This proposed rule would remove the requirements at 50 CFR 300.222(oo) and 50 CFR 300.225 for U.S. commercial fishing vessels to provide reports prior to entering or exiting the EHSSMA. This proposed rule would also prohibit all U.S. commercial fishing vessels fishing for HMS from engaging in transshipments in the EHSSMA, beginning on January 1, 2019.

Administrative Changes to Existing Regulations

The regulations at 50 CFR 300.217(b) and 300.218(a)(2)(v) contain outdated cross references that would be corrected by this proposed rule. In § 300.217, paragraph (b)(1) would be revised to provide a cross reference to § 300.336(b)(2), not § 300.14(b), and in § 300.218(a)(2)(v), the cross reference would be to § 300.341(a) instead of to § 300.17(a) and (b). Sections 300.14(b) and 300.17(a) and (b) no longer exist and have been replaced through a new regulatory action implementing provisions of the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*).

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this proposed rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment. Section 304(b) of the MSA provides for a 15 day comment period for these types of fishery rules. Additionally, NMFS finds ''good cause'' under the Administrative Procedure Act that a longer notice and comment period would be contrary to the public interest. 5 U.S.C. 553(b)(B). As described above, the first FAD prohibition period would begin on July 1, 2018. Providing for more than 15 days advance notice and public comment on the proposed rule increases the risk that the Commission's FAD prohibition period will become effective prior to the effective date of the final rule, possibly resulting in the United States' non-compliance with its international obligations. Thus, in order to provide the public with the opportunity to comment on this proposed rule while ensuring that the agency has sufficient time to consider any public comments and publish a final rule that is effective by July 1, 2018, NMFS is providing the public with a 15-day comment period on this proposed rule.

Coastal Zone Management Act (CZMA)

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the State of Hawaii. Determinations to Hawaii and each of the Territories were submitted on March 12, 2018, for review by the responsible state and territorial agencies under section 307 of the CZMA.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

Regulatory Flexibility Act (RFA)

An initial regulatory flexibility analysis (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 as well as its objectives, and the legal basis for this action are contained in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. The analysis follows:

Estimated Number of Small Entities Affected

For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

The proposed rule would apply to owners and operators of U.S. commercial fishing vessels used to fish for HMS in the Convention Area, including longline vessels (except those operating as part of the longline fisheries of American Samoa, CNMI, or Guam), purse seine vessels, and albacore troll vessels. Based on the number of U.S. vessels with WCPFC Area Endorsements, which are required to fish on the high seas in the Convention Area, the estimated numbers of affected longline, purse seine, and albacore troll fishing vessels is 163, 37, and 20, respectively.

Based on limited financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all of the affected longline and albacore troll vessels, and slightly more than half of the vessels in the purse seine fleet, 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 $11.0 million. Within the purse seine fleet, analysis of average revenue, by vessel, for the three years of 2014–2016 reveals that average annual revenue among vessels in the fleet was about $10.2 million, and the three-year annual averages were less than the $11 million threshold for 22 vessels in the fleet.

Recordkeeping, Reporting, and Other Compliance Requirements

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 described below for each of the first four elements of the proposed rule. The fifth element, administrative changes to existing regulations, is not considered further in this IRFA because it would be of a housekeeping nature and not have any substantive effects on any entities.

1. Longline Bigeye Tuna Catch Limits

This element of the proposed rule would not establish any new reporting or recordkeeping requirements. The new compliance requirement would be for affected vessel owners and operators to cease retaining, landing, and transshipping bigeye tuna caught with longline gear in the Convention Area if and when the bigeye tuna catch limit of 3,554 mt (reduced by the amount of any overages in the preceding year) is reached in any of the years 2018–2020, for the remainder of the calendar year, subject to the exceptions and provisos described in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. Although the restrictions that would come into effect in the event the catch limit is reached would not prohibit longline fishing, *per se,* they are sometimes referred to in this analysis as constituting a fishery closure.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with this requirement are described below to the extent possible.

Complying with this element of the proposed rule could cause foregone fishing opportunities and result in associated economic losses in the event that the bigeye tuna catch limit is reached in any of the years 2018–2020 and the restrictions on retaining, landing, and transshipping bigeye tuna are imposed for portions of those years. These costs cannot be projected quantitatively with any certainty. The proposed annual limit of 3,554 mt can be compared to catches in 2005–2008, before limits were in place. The average annual catch in that period was 4,709 mt. Based on that history, as well as fishing patterns in 2009–2016, when limits were in place, there appears to be a relatively high likelihood of the proposed limits being reached in 2018–2020. In 2015, for example, which saw exceptionally high catches of bigeye tuna, the limit of 3,502 mt was estimated to have been reached by, and the fishery was closed on, August 5 (see temporary rule published July 28, 2015; 80 FR 44883). The fishery was subsequently re-opened for vessels included in agreements with the governments of the CNMI and Guam under regulations implementing Amendment 7 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FEP) (50 CFR 665.819). In 2016, the limit of 3,554 mt was estimated to have been reached by September 9, 2016, and in 2017, the limit of 3,138 mt was estimated to have been reached by September 1, 2017. Thus, if bigeye tuna catch patterns in 2018–2020 are like those in 2005–2008, the limit would be reached in the fourth quarter of the year, and if they are like those in 2015, 2016, or 2017, the limit would be reached in the third quarter of the year.

If the bigeye tuna limit is reached before the end of any of the years 2018–2020 and the Convention Area longline bigeye tuna fishery is consequently closed for the remainder of the calendar year, it can be expected that affected vessels would shift to the next most profitable fishing opportunity (which might be not fishing at all). Revenues from that next best alternative activity reflect the opportunity costs associated with longline fishing for bigeye tuna in the Convention Area. The economic cost of the proposed rule would not be the direct losses in revenues that would result from not being able to fish for bigeye tuna in the Convention Area, but rather the difference in benefits derived from that activity and those derived from the next best activity. The economic cost of the proposed rule on affected entities is examined here by first estimating the direct losses in revenues that would result from not being able to fish for bigeye tuna in the Convention Area as a result of the catch limit being reached. Those losses represent the upper bound of the economic cost of the proposed rule on affected entities. Potential next-best alternative activities that affected entities could undertake are then identified in order to provide a (mostly qualitative) description of the degree to which actual costs would be lower than that upper bound.

Upper bounds on potential economic costs can be estimated by examining the projected value of longline landings from the Convention Area that would not be made as a result of reaching the limit. For this purpose, it is assumed that, absent this proposed rule, bigeye tuna catches in the Convention Area in each of the years 2018–2020 would be 5,000 mt, slightly more than the average in 2005–2008. Under this scenario, imposition of annual limits of 3,554 mt would result in 29 percent less bigeye tuna being caught each year than under no action. In the deep-set fishery, catches of marketable species other than bigeye tuna would likely be affected in a similar way if vessels do not shift to alternative activities. Assuming for the moment that ex-vessel prices would not be affected by a fishery closure, under the proposed rule, revenues in 2018–2020 to entities that participate exclusively in the deep-set fishery would be approximately 29 percent less than under no action. Average annual ex-vessel revenues (from all species) per mt of bigeye tuna caught during 2005–2008 were about $14,190/mt (in 2014 dollars, derived from the latest available annual report on the pelagic fisheries of the western Pacific Region (Western Pacific Regional Fishery Management Council, 2014, Pelagic Fisheries of the Western Pacific Region: 2012 Annual Report. Honolulu, Western Pacific Fishery Management Council)). If there are 128 active vessels in the fleet, as there were during 2005–2008, on average, then under the no-action scenario of fleet-wide anual catches of 5,000 mt, each vessel would catch 39 mt/yr, on average. Reductions of 29 percent in 2018–2020 as a result of the proposed limits would be about 11 mt per year. Applying the average ex-vessel revenues (from all species) of $14,190 per mt of bigeye tuna caught, the reductions in ex-vessel revenue per vessel would be $160,000 per year, on average.

In the shallow-set fishery, affected entities would bear limited costs in the event of the limit being reached (but most affected entities also participate in the deep-set fishery and might bear costs in that fishery, as described below). The cost would be about equal to the revenues lost from not being able to retain or land bigeye tuna captured while shallow-setting in the Convention Area, or the cost of shifting to shallow-setting in the eastern Pacific Ocean (EPO), which is to the east of 150 degrees W longitude, whichever is less. In the fourth calendar quarters of 2005–2008, almost all shallow-setting effort took place in the EPO, and 97 percent of bigeye tuna catches were made there, so the cost of a bigeye tuna fishery closure to shallow-setting vessels would appear to be very limited. During 2005–2008, the shallow-set fishery caught an average of 54 mt of bigeye tuna per year from the Convention Area. If the proposed bigeye tuna catch limit is reached even as early as July 31 in any of the years 2018–2020, the Convention Area shallow-set fishery would have caught at that point, based on 2005–2008 data, on average, 99 percent of its average annual bigeye tuna catches. Imposition of the landings restriction at

that point in any of the years 2018–2020 would result in the loss of revenues from approximately 0.5 mt (1 percent of 54 mt) of bigeye tuna, which, based on recent ex-vessel prices, would be worth no more than $5,000. Thus, expecting about 27 vessels to engage in the shallow-set fishery (the annual average in 2005–2012), the average of those potentially lost annual revenues would be no more than $200 per vessel. The remainder of this analysis focuses on the potential costs of compliance in the deep-set fishery.

It should be noted that the impacts on affected entities' profits would be less than impacts on revenues when considering the costs of operating vessels, because costs would be lower if a vessel ceases fishing after the catch limit is reached. Variable costs can be expected to be affected roughly in proportion to revenues, as both variable costs and revenues would stop accruing once a vessel stops fishing. But affected entities' costs also include fixed costs, which are borne regardless of whether a vessel is used to fish—*e.g.,* if it is tied up at the dock during a fishery closure. Thus, profits would likely be adversely impacted proportionately more than revenues.

As stated previously, actual compliance costs for a given entity might be less than the upper bounds described above, because ceasing fishing would not necessarily be the most profitable alternative opportunity when the catch limit is reached. Two alternative opportunities that are expected to be attractive to affected entities include: (1) Deep-set longline fishing for bigeye tuna in the Convention Area in a manner such that the vessel is considered part of the longline fishery of American Samoa, Guam, or the CNMI; and (2) deep-set longline fishing for bigeye tuna and other species in the EPO. These two opportunities are discussed in detail below. Four additional opportunities are: (3) Shallow-set longline fishing for swordfish (for deep-setting vessels that would not otherwise do so), (4) deep-set longline fishing in the Convention Area for species other than bigeye tuna, (5) working in cooperation with vessels operating as part of the longline fisheries of the Participating Territories—specifically, receiving transshipments at sea from them and delivering the fish to the Hawaii market, and (6) vessel repair and maintenance. A study by NMFS of the effects of the WCPO bigeye tuna longline fishery closure in 2010 (Richmond, L., D. Kotowicz, J. Hospital and S. Allen, 2015, Monitoring socioeconomic impacts of Hawai'i's 2010 bigeye tuna closure: Complexities of local management in a global fishery, Ocean & Coastal Management 106:87–96) did not identify the occurrence of any alternative activities that vessels engaged in during the closure, other than deep-setting for bigeye tuna in the EPO, vessel maintenance and repairs, and granting lengthy vacations to employees. Based on those findings, NMFS expects that alternative opportunities (3), (4), (5) and (6) are probably unattractive relative to the first two alternatives, and are not discussed here in any further detail. NMFS recognizes that vessel maintenance and repairs and granting lengthy vacations to employees are two alternative activities that might be taken advantage of if the fishery is closed, but no further analysis of their mitigating effects is provided here.

Before examining in detail the two potential alternative fishing opportunities that would appear to be the most attractive to affected entities, it is important to note that under the proposed rule, once the limit is reached and the WCPO bigeye tuna fishery is closed, fishing with longline gear both inside and outside the Convention Area during the same trip would be prohibited (except in the case of a fishing trip that is in progress when the limit is reached and the restrictions go into effect). For example, after the restrictions go into effect, during a given fishing trip, a vessel could be used for longline fishing for bigeye tuna in the EPO or for longline fishing for species other than bigeye tuna in the Convention Area, but not for both. This reduced operational flexibility would bring costs, because it would constrain the potential profits from alternative opportunities. Those costs cannot be quantified.

A vessel could take advantage of the first alternative opportunity (deep-setting for bigeye tuna in a manner such that the vessel is considered part of the longline fishery of one of the three U.S. Participating Territories), by three possible methods: (a) Landing the bigeye tuna in one of the three Participating Territories, (b) holding an American Samoa Longline Limited Access Permit, or (c) being considered part of a Participating Territory's longline fishery, by agreement with one or more of the three Participating Territories under the regulations implementing Amendment 7 to the Pelagics FEP (50 CFR 665.819). In the first two circumstances, the vessel would be considered part of the longline fishery of the Participating Territory only if the bigeye tuna were not caught in the portion of the U.S. EEZ around the Hawaiian Islands and were landed by a U.S. vessel operating in compliance with a permit issued under the regulations implementing the Pelagics FEP or the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species.

With respect to the first method of engaging in alternative opportunity 1 (1.a.) (landing the bigeye tuna in one of the Participating Territories), there are three potentially important constraints. First, whether the fish are landed by the vessel that caught the fish or by a vessel to which the fish were transshipped, the costs of a vessel transiting from the traditional fishing grounds in the vicinity of the Hawaiian Archipelago to one of the Participating Territories would be substantial. Second, none of these three locales has large local consumer markets to absorb substantial additional landings of fresh sashimi-grade bigeye tuna. Third, transporting the bigeye tuna from these locales to larger markets, such as markets in Hawaii, the U.S. west coast, or Japan, would bring substantial additional costs and risks. These cost constraints suggest that this alternative opportunity has limited potential to mitigate the economic impacts of the proposed rule on affected small entities.

The second method of engaging in the first alternative opportunity (1.b.) (having an American Samoa Longline Limited Access Permit), would be available only to the subset of the Hawaii longline fleet that has both Hawaii and American Samoa longline permits (dual permit vessels). Vessels that do not have both permits could obtain them if they meet the eligibility requirements and pay the required costs. For example, the number of dual permit vessels increased from 12 in 2009, when the first WCPO bigeye tuna catch limit was established, to 23 in 2016. The previously cited NMFS study of the 2010 fishery closure (Richmond *et al.* 2015) found that bigeye tuna landings of dual permit vessels increased substantially after the start of the closure on November 22, 2010, indicating that this was an attractive opportunity for dual permit vessels, and suggesting that those entities might have benefitted from the catch limit and the closure.

The third method of engaging in the first alternative opportunity (1.c.) (entering into an Amendment 7 agreement), was also available in 2011–2017 (in 2011–2013, under section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.,* the Consolidated and Further Continuing Appropriations Act, 2012, continued by Public Law 113–6, 125 Stat. 603, section 110, the

Department of Commerce Appropriations Act, 2013; hereafter, ''section 113(a)''). As a result of agreements that were in place in 2011–2014, the WCPO bigeye tuna fishery was not closed in any of those years. In 2015, 2016, and 2017 the fishery was closed but then reopened when agreements went into effect. Participation in an Amendment 7 agreement would likely not come without costs to fishing businesses. As an indication of the possible cost, the terms of the agreement between American Samoa and the members of the Hawaii Longline Association (HLA) in effect in 2011 and 2012 included payments totaling $250,000 from the HLA to the Western Pacific Sustainable Fisheries Fund, equal to $2,000 per vessel. It is not known how the total cost was allocated among the members of the HLA, so it is possible that the owners of particular vessels paid substantially more than or less than $2,000.

The second alternative opportunity (2) (deep-set fishing for bigeye tuna in the EPO), would be an option for affected entities only if it is allowed under regulations implementing the decisions of the IATTC. NMFS has issued a final rule to implement the IATTC's most recent resolution on the management of tropical tuna stocks (83 FR 15503; April 11, 2018). The final rule establishes an annual limit of 750 mt on the catch of bigeye tuna in the EPO by vessels at least 24m in length in each of the years 2018–2020. Annual longline bigeye tuna catch limits have been in place for the EPO in most years since 2004. Since 2009, when the limit was 500 mt, it was reached in 2013 (November 11), 2014 (October 31), and 2015 (August 12). In 2016 NMFS forecasted that the limit would be reached July 25 and subsequently closed the fishery, but later determined that the catch limit had not been reached and re-opened the fishery on October 4, 2016 (81 FR 69717). The limit was not reached in 2017.

The highly seasonal nature of bigeye tuna catches in the EPO and the relatively high inter-annual variation in catches prevents NMFS from making a useful prediction of whether and when the EPO limits in 2018–2020 are likely to be reached. If it is reached, this alternative opportunity would not be available for large longline vessels, which constitute about a quarter of the fleet.

Historical fishing patterns can provide an indication of the likelihood of affected entities making use of the opportunity of deep-setting in the EPO in the event of a closure in the WCPO. The proportion of the U.S. fishery's annual bigeye tuna catches that were captured in the EPO from 2005 through 2008 ranged from 2 percent to 22 percent, and averaged 11 percent. In 2005–2007, that proportion ranged from 2 percent to 11 percent, and may have been constrained by the IATTC-adoped bigeye tuna catch limits established by NMFS (no limit was in place for 2008). Prior to 2009, most of the U.S. annual bigeye tuna catch by longline vessels in the EPO typically was made in the second and third quarters of the year; in 2005–2008 the percentages caught in the first, second, third, and fourth quarters were 14, 33, 50, and 3 percent, respectively. These data demonstrate two historical patterns—that relatively little of the bigeye tuna catch in the longline fishery was typically taken in the EPO (11 percent in 2005–2008, on average), and that most EPO bigeye tuna catches were made in the second and third quarters, with relatively few catches in the fourth quarter when the proposed catch limit would most likely be reached. These two patterns suggest that there could be substantial costs for at least some affected entities that shift to deep-set fishing in the EPO in the event of a closure in the WCPO. On the other hand, fishing patterns since 2008 suggest that a substantial shift in deep-set fishing effort to the EPO could occur. In 2009, 2010, 2011, 2012, 2013, 2014, 2015, and 2016 the proportions of the fishery's annual bigeye tuna catches that were captured in the EPO were about 16, 27, 23, 19, 36, 35, 47, and 36 percent, respectively, and most bigeye tuna catches in the EPO were made in the latter half of the calendar years.

The NMFS study of the 2010 closure (Richmond *et al.* 2015) found that some businesses—particularly those with smaller vessels—were less inclined than others to fish in the EPO during the closure because of the relatively long distances that would need to be travelled in the relatively rough winter ocean conditions. The study identified a number of factors that likely made fishing in the EPO less lucrative than fishing in the WCPO during that part of the year, including fuel costs and the need to limit trip length in order to maintain fish quality and because of limited fuel storage capacity.

In addition to affecting the volume of landings of bigeye tuna and other species, the proposed catch limits could affect fish prices, particularly during a fishery closure. Both increases and decreases appear possible. After a limit is reached and landings from the WCPO are prohibited, ex-vessel prices of bigeye tuna (*e.g.,* that are caught in the EPO or by vessels in the longline fisheries of the three U.S. Participating Territories), as well as of other species landed by the fleet, could increase as a result of the constricted supply. This would mitigate economic losses for vessels that are able to continue fishing and landing bigeye tuna during the closure. For example, the NMFS study of the 2010 closure (Richmond *et al.* 2015) found that ex-vessel prices during the closure in December were 50 percent greater than the average during the previous five Decembers. (It is emphasized that because it was an observational study, neither this nor other observations of what occurred during the closure can be affirmatively linked as effects of the fishery closure.)

Conversely, a WCPO bigeye tuna fishery closure could cause a decrease in ex-vessel prices of bigeye tuna and other products landed by affected entities if the interruption in the local supply prompts the Hawaii market to shift to alternative (*e.g.,* imported) sources of bigeye tuna. Such a shift could be temporary—that is, limited to 2018–2020—or it could lead to a more permanent change in the market (*e.g.,* as a result of wholesale and retail buyers wanting to mitigate the uncertainty in the continuity of supply from the Hawaii longline fisheries). In the latter case, if locally caught bigeye tuna fetches lower prices because of stiffer competition with imported bigeye tuna, then ex-vessel prices of local product could be depressed indefinitely. The NMFS study of the 2010 closure (Richmond *et al.* 2015) found that a common concern in the Hawaii fishing community prior to the closure in November 2010 was retailers having to rely more heavily on imported tuna, causing imports to gain a greater market share in local markets. The study found this not to have been borne out, at least not in 2010, when the evidence gathered in the study suggested that few buyers adapted to the closure by increasing their reliance on imports, and no reports or indications were found of a dramatic increase in the use of imported bigeye tuna during the closure. The study concluded, however, that the 2010 closure caused buyers to give increased consideration to imports as part of their business model, and it was predicted that tuna imports could increase during any future closure. To the extent that ex-vessel prices would be reduced by this action, revenues earned by affected entities would be affected accordingly, and these impacts could occur both before and after the limit is reached, and as described above, possibly after 2020.

The potential economic effects identified above would vary among individual business entities, but it is not

possible to predict the range of variation. Furthermore, the impacts on a particular entity would depend on both that entity's response to the proposed rule and the behavior of other vessels in the fleet, both before and after the catch limit is reached. For example, the greater the number of vessels that take advantage—before the limit is reached—of the first alternative opportunity (1), fishing as part of one of the Participating Territory's fisheries, the lower the likelihood that the limit would be reached.

The fleet's behavior in 2011 and 2012 is illustrative. In both those years, most vessels in the Hawaii fleet were included in a section 113(a) arrangement with the government of American Samoa, and as a consequence, the U.S. longline catch limit was not reached in either year. Thus, none of the vessels in the fleet, including those not included in the section 113(a) arrangements, were prohibited from fishing for bigeye tuna in the Convention Area at any time during those two years. The fleet's experience in 2010 (before opportunities under section 113(a) or Amendment 7 to the Pelagics FEP were available) provides another example of how economic impacts could be distributed among different entities. In 2010 the limit was reached and the WCPO bigeye tuna fishery was closed on November 22. As described above, dual permit vessels were able to continue fishing outside the U.S. EEZ around the Hawaiian Archipelago and benefit from the relatively high ex-vessel prices that bigeye tuna fetched during the closure.

In summary, based on potential reductions in ex-vessel revenues, NMFS has estimated that the upper bound of potential economic impacts of the proposed rule on affected longline fishing entities could be roughly $160,000 per vessel per year, on average. The actual impacts to most entities are likely to be substantially less than those upper bounds, and for some entities the impacts could be neutral or positive (*e.g.,* if one or more Amendment 7 agreements are in place in 2018–2020 and the terms of the agreements are such that the U.S. longline fleet is effectively unconstrained by the catch limits).

2. FAD Restrictions

This element of the proposed rule would not establish any new reporting or recordkeeping requirements. The new requirement would be for affected vessel owners and operators to comply with the FAD restrictions described earlier in the **SUPPLEMENTARY INFORMATION** section of the preamble, including FAD prohibition periods throughout the Convention Area from July 1 through September 30 in each of the years 2018–2020 and FAD prohibition periods just on the high seas in the Convention Area from November 1 through December 31 in each of the same years. There would also be a limit of 350 active FADs that may be deployed per vessel at any given time. Anecdotal information from the U.S. purse seine fishing industry indicates that U.S. purse seine vessels have not ever deployed more than 350 active FADs at any given time, so NMFS does not expect that the limit would be constraining or otherwise affect the behavior of purse seine operations, and it is not considered further in this IRFA.

Fulfillment of the element's requirements is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with the requirements are described below to the extent possible.

The proposed FAD restrictions would substantially constrain the manner in which purse seine fishing could be conducted in the specified areas and periods in the Convention Area; in those areas and during those periods, vessels would be able to set only on free, or ''unassociated,'' schools.

With respect to the three-month FAD closure throughout the Convention Area: Assuming that sets would be evenly distributed through the year, the number of annual FAD sets would be expected to be about three-fourths the number that would occur without a seasonal FAD closure. For example, during 2014–2016, the proportion of all sets that were made on FADs when FAD setting was allowed was 50 percent. As an indicative example, if the fleet makes 8,000 sets in a given year (somewhat more than the 2014–2016 average of 7,420 sets per year) and 50 percent of those are FAD sets, it would make 4,000 FAD sets. If there is a three-month closure and 50 percent of the sets outside the closure are FAD sets, and sets are evenly distributed throughout each year, the annual number of FAD sets would be 3,000. This can be compared to the estimated 2,494 annual FAD sets that were made in 2014–2016, on average, when there were three-month FAD closures.

With respect to the two-month high seas FAD closure: The effects of this element are difficult to predict. If the high seas are closed to all purse seine fishing during November–December as a result of the fishing effort limit being reached, the high seas FAD closure during those two months would have no additional effect whatsoever. If the high seas are not closed to fishing, the prohibition on FAD setting would make the high seas less favorable for fishing than they otherwise would be, because only unassociated sets would be allowed there. It is not possible to characterize how influential that factor would be, however. Thus, it is not possible to predict the effects in terms of the spatial distribution of fishing effort or the proportion of fishing effort that is made on FADs.

With respect to both the three-month FAD closure and two-month high seas FAD closure: As for the limits on fishing effort, vessel operators might choose to schedule their routine maintenance periods so as to take best advantage of the available opportunities for making FAD sets, such as during the FAD closures. However, the limited number of vessel maintenance facilities in the region might constrain vessel operators' ability to do this.

It is emphasized that the indicative example given above is based on the assumption that the FAD set ratio would be 50 percent during periods when FAD sets are allowed, as well as that sets are distributed evenly throughout the year. These assumptions are weak from several perspectives, so the results should be interpreted with caution. First, as described above, FAD set ratios have varied widely from year to year, indicating that the conditions that dictate ''optimal'' FAD set ratios for the fleet vary widely from year to year, and cannot be predicted with any certainty. Second, the optimal FAD set ratio during open periods might depend on how long and when those periods occur. For example, FAD fishing might be particularly attractive soon after a closed period during which FADs aggregated fish but were not fished on. These factors are not explicitly accounted for in this analysis, but the 50 percent FAD ratio used in this analysis was taken from 2014–2016, when there was a three-month FAD closure, so it is probably a better indicator for the action alternatives than FAD set ratios for years prior to 2009, when no seasonal FAD closures were in place. With respect to the distribution of sets through the year, the existence of collective limits on fishing effort might create an incentive for individual vessels to fish harder earlier in the year than they otherwise would, resulting in a ''race to fish.'' Limitations on fishing effort throughout the Convention Area could cause vessels to fish (irrespective of set type or the timing of FAD closures) harder earlier in a given year than they would without the limits. However, any such effect is not expected to be great, because most vessels in the fleet tend to fish virtually full time, leaving little

flexibility to increase fishing effort at any particular time of the year.

Vessels in the U.S. WCPO purse seine fleet make both unassociated sets and FAD sets when not constrained by regulation, so one type of set is not always more valuable or efficient than the other type. Which set type is optimal at any given time is a function of immediate conditions in and on the water, but probably also of such factors as fuel prices (unassociated sets involve more searching time and thus tend to bring higher fuel costs than FAD sets) and market conditions (*e.g.,* FAD fishing, which tends to result in greater catches of lower-value skipjack tuna and smaller yellowfin tuna and bigeye tuna than unassociated sets, might be more attractive and profitable when canneries are not rejecting small fish). Clearly, the ability to do either type of set is valuable, and constraints on the use of either type can be expected to bring adverse economic impacts to fishing operations. Thus, the greater the constraints on the ability to make FAD sets, the greater the expected economic impacts of the action. Because the factors affecting the relative value of FAD sets and unassociated sets are many, and the relationships among them are not well known, it is not possible to quantify the expected economic impacts of the FAD restrictions. However, it appears reasonable to conclude the following: First, the FAD restrictions would adversely impact producer surplus relative to the no-action alternative. The fact that the fleet has made such a substantial portion of its sets on FADs in the past indicates that prohibiting the use of FADs in the specified areas and periods could bring substantial costs and/or revenue losses. Second, vessel operators might be able to mitigate the impacts of the FAD restrictions by scheduling their routine vessel and equipment maintenance during the FAD closures, but this opportunity might be constrained by the limited vessel maintenance facilities in the region.

3. Purse Seine Fishing Effort Limits

This element of the proposed rule would not establish any new reporting or recordkeeping requirements, but the existing ''Daily FAD reports'' required at 50 CFR 300.218(g) would be slightly revised, and renamed ''Daily purse seine fishing effort reports'' and would slightly modify the type of information collected.

There would be annual limits of 1,370 and 458 fishing days on the high seas and in the U.S. EEZ, respectively, in the Convention Area. In addition, there would be a mechanism to increase the U.S. EEZ limit in a given year to 558 fishing days if 458 fishing days are used by October 1 of that year.

Fulfillment of this element's requirements is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with the requirements are described below to the extent possible.

Regarding the modification to the daily reporting requirement, the specific information required in the reports would be slightly modified from those of the existing ''Daily FAD reports,'' but the costs of compliance are not expected to change.

Regarding the fishing effort limits, if and when the fishery on the high seas or in the U.S. EEZ is closed as a result of a limit being reached in any of the years 2018–2020, owners and operators of U.S. purse seine vessels would have to cease fishing in that area for the remainder of the calendar year. Closure of the fishery in either of those areas could thereby cause foregone fishing opportunities and associated economic losses if the area contains preferred fishing grounds during such a closure. Historical fishing rates in the two areas give a rough indication of the likelihood of the limits being reached.

Regarding the U.S. EEZ, from 2009 through 2017 (NMFS has only preliminary estimates for 2017), no more than 50 percent of the proposed limit of 458 fishing days was ever used (and no more than the 41 percent of the possible limit of 558 fishing days). This history suggests a relatively low likelihood of the proposed EEZ limit being reached in 2018–2020. However, the allowance for an extra 100 fishing days if the 458 fishing days are used by October 1 could provide an incentive for the fleet to use more fishing days in the EEZ than it otherwise would. Furthermore, this would be the first time that separate limits would be established for the EEZ and the high seas, so the incentives for individual vessels in the fleet would change. A minority of the fleet is authorized to fish in the U.S. EEZ (8 of the 33 vessels currently licensed under the South Pacific Tuna Treaty (SPTT) [1] have fishery endorsements on their U.S. Coast Guard Certificates of Documentation, which are required to fish in the U.S. EEZ, and 1 of the other 4 purse seine vessels with WCPFC Area Endorsements has a fishery endorsement), and with a separate limit for the U.S. EEZ, this minority might take more advantage of it than it has in the past.

Regarding the high seas from 2009 through 2017, between 31 and 135 percent of the proposed limit of 1,370 fishing days was used, and at least 100 percent was used in three of the nine years. In two years, 2015 and 2016, the ELAPS was closed for part of the year (starting June 15 in 2015, and September 2 in 2016), so more fishing effort might have occurred in those two years were there no limits. This history suggests a substantial likelihood of the proposed high seas limit being reached in any of the years 2018–2020.

Two factors could have a substantial influence on the amount of fishing effort in the U.S. EEZ and on the high seas in 2018–2020: First, the number of fishing days available in foreign waters (the fleet's main fishing grounds) pursuant to the SPTT will influence the incentive to fish outside those waters, including the U.S. EEZ and high seas. Second, El Niño—Southern Oscillation (ENSO) conditions will influence where the best fishing grounds are.

Regarding fishing opportunities in foreign waters, in December 2016, the United States and PIPs agreed upon a revised SPTT, and under this new agreement U.S. purse seine fishing businesses can purchase fishing days in the EEZs of the PIPs. There are limits on the number of such ''upfront'' fishing days that may be purchased. These limits can influence the amount of fishing in other areas, such as the U.S. EEZ and the high seas, as well as the EPO. For example, if the number of available upfront fishing days is relatively small, fishing effort in the U.S. EEZ and/or high seas might be relatively great. In fact, the number of upfront days available for the Kiribati EEZ, which has traditionally constituted important fishing grounds for the U.S. fleet, is notably small—only 300 fishing days per year. However, the new SPTT regime provides for U.S. purse seine fishing businesses to purchase ''additional'' fishing days through direct bilateral agreements with the PIPs. NMFS cannot project how many additional days will be purchased in any given years, so cannot gauge how the limits on upfront days might influence fishing effort in the U.S. EEZ or on the high seas. Limits on upfront days are therefore not considered here any further.

Additionally, effective January 1, 2015, Kiribati prohibited commercial fishing in the Phoenix Islands Protected Area, which is a large portion of the Kiribati EEZ around the Phoenix Islands. These limitations in the Kiribati

[1] The majority of U.S. purse seine fishing activity in the Convention Area takes place in the waters of Pacific Island Parties to the SPTT (PIPs), pursuant to the terms of the SPTT.

EEZ in 2015 probably made fishing in the ELAPS more attractive than it otherwise would be.

Regarding El Niño Southern Oscillation (ENSO) conditions, the eastern areas of the WCPO tend to be comparatively more attractive to the U.S. purse seine fleet during El Niño events, when warm surface water spreads from the western Pacific to the eastern Pacific and large, valuable yellowfin tuna become more vulnerable to purse seine fishing and trade winds lessen in intensity. Consequently, the U.S. EEZ and high seas, much of which is situated in the eastern range of the fleet's fishing grounds, is likely to be more important fishing grounds to the fleet during El Niño events (as compared to neutral or La Niña events). This is supported by there being a statistically significant correlation between annual average per-vessel fishing effort in the ELAPS and the Oceanic Niño Index, a common measure of ENSO conditions, over the life of the SPTT through 2010.

El Niño conditions were present in 2015 and in the first half of 2016, and might have contributed to the relatively high rates of fishing in the ELAPS in those years. ENSO neutral conditions began in the latter half of 2016, and continued until the fourth quarter of 2017, when there was a shift to La Niña conditions, which persisted through early 2018 (and which is consistent with the moderate rates of fishing in the ELAPS in 2017). As of February 8, 2018, the National Weather Service states that a transition from La Niño to ENSO-neutral conditions is likely (~55 percent chance) in March–May of 2018 (NWS 2018). Thus ENSO conditions might have a negative influence on fishing in the U.S. EEZ and the high seas early in 2018 and a largely neutral influence for the rest of 2018. Their influence on fishing effort in 2019 and 2020 cannot be predicted with any certainty.

Another potentially important factor is that the EEZ and high seas limits would be competitive limits, so their establishment could cause a ''race to fish'' in the two areas. That is, vessel operators might seek to take advantage of the limited number of fishing days available in the areas before the limits are reached, and fish harder in the ELAPS than they would if there were no limits. On the one hand, any such race-to-fish effect might be reflected in the history of fishing in the ELAPS, described above. On the other hand, anecdotal information from the fishing industry suggests that the limits might have been internally allocated by the fleet, which might have tempered any race to fish. It is not known whether the industry intends to internally allocate the proposed limits.

In summary, although difficult to predict, either the U.S. EEZ or high seas limits could be reached in any of the years 2018–2020, especially the high seas limits. If either limit is reached in a given year, the fleet would be prohibited from fishing in that area for the remainder of the calendar year.

The closure of any fishing grounds for any amount of time can be expected to bring adverse impacts to affected entities (*e.g.,* because the open area might, during the closed period, be less productive than the closed area, and vessels might use more fuel and spend more time having to travel to open areas). The severity of the impacts of a closure would depend greatly on the length of the closure and where the most favored fishing grounds are during the closure. A study by NMFS (Chan, V. and D. Squires. 2016. Analyzing the economic impacts of the 2015 ELAPS closure. NMFS Internal Report) estimated that the overall losses to the combined sectors of the vessels, canneries and vessel support companies from the 2015 ELAPS closure ranged from $11 million and $110 million depending on the counterfactual period considered. These results suggest that there were impacts from the ELAPS closure on the American Samoa economy and a connection between U.S. purse seine vessels and the broader American Samoa economy.

If either the U.S. EEZ or high seas is closed, possible next-best opportunities for U.S. purse seine vessels fishing in the WCPO include fishing in the other of the two areas, fishing in foreign EEZs inside the Convention Area, fishing outside the Convention Area in EPO, and not fishing.

With respect to fishing in the U.S. EEZ or on the high seas: If the U.S. EEZ were closed, the high seas would be available to the fleet until its limit is reached. If the high seas were closed, the U.S. EEZ would be available until its limit is reached, but only for the vessels with fishery endorsements on their Certificates of Documentation (currently 9, including 8 vessels with SPTT licenses and one additional vessel without).

With respect to fishing in the Convention Area in foreign EEZs: As described above, under the SPTT the fleet might have substantial fishing days available in the Pacific Island country EEZs that dominate the WCPO, but it is not possible to predict how many fishing days will be available to the fleet as a whole or to individual fishing businesses.

With respect to fishing in the EPO: The fleet has generally increased its fishing operations in the EPO since 2014, and as of 2017, there were 17 purse seine vessel in the WCPO fleet that are also listed on the IATTC Vessel Register. In order to fish in the EPO, a vessel must be on the IATTC's Regional Vessel Register and categorized as active (50 CFR 300.22(b)), which involves fees of about $14.95 per cubic meter of well space per year (*e.g.,* a vessel with 1,200 m^3 of well space would be subject to annual fees of $17,940). (As an exception to this rule, an SPTT-licensed vessel is allowed to make one fishing trip in the EPO each year without being categorized as active on the IATTC Regional Vessel Register. The trip must not exceed 90 days in length, and there is an annual limit of 32 such trips for the entire SPTT-licensed fleet (50 CFR 300.22(b)(1)).) The number of U.S. purse seine vessels in the WCPO fleet that have opted to be categorized as such has increased in the last few years from zero to 17, probably largely a result of constraints on fishing days in the WCPO and/or uncertainty in future access arrangements under the SPTT. This suggests an increasing attractiveness of fishing in the EPO, in spite of the costs associated with doing so. However, in 2018 vessels probably will not have the opportunity to fish in the EPO year-round. To implement a recent decision of the IATTC, NMFS has published a final rule that requires purse seine vessels to choose between two EPO fishing prohibition periods each year in 2018–2020: July 29–October 8 or November 9–January 19 (72 days in either case). Thus, the opportunity to fish in the EPO might be constrained, depending on when the U.S. EEZ and/or high seas in the WCPFC Area is closed, and which EPO closure period a given vessel operator chooses.

With respect to not fishing at all during a closure of the U.S. EEZ or high seas: This would mean a loss of any revenues from fishing. However, many of the vessels' variable operating costs would be avoided in that case, and it is possible that for some vessels a portion of the time might be used for productive activities like vessel and equipment maintenance.

The opportunity costs of engaging in next-best opportunities in the event of a closure are not known, so the potential impacts cannot be quantified. However, to give an indication of the magnitude of possible economic impacts to producers in the fishery (*i.e.,* an indication of the upper bound of those impacts), information on revenues per day is provided here.

The last five years for which catch estimates for the U.S. WCPO purse seine fleet are available are 2012–2016. Those estimates, adjusted to an indicative fleet size of 35 vessels, equate to annual average catches of skipjack tuna, yellowfin tuna, and bigeye tuna of 236,077 mt, 24,802 mt, and 4,213 mt, respectively, or 265,091 mt in total. Applying an indicative current Bangkok cannery price for skipjack tuna of $1,500 per mt to all three species, the value of annual fleet-wide catches at 2012–2016 average levels would be about $398 million, equivalent to a little more than $1 million per calendar day, on average. It should be noted that cannery prices are fairly volatile; for example, cannery prices are much lower now than prices during most of 2017.

In addition to the effects described above, the proposed limits could affect the temporal distribution of fishing effort in the U.S. purse seine fishery. Since the limits would apply fleet-wide—that is, they would not be allocated to individual vessels—vessel operators might have an incentive to fish harder in the affected areas earlier in each calendar year than they otherwise would. Such a race-to-fish effect might also be expected in the time period between when a closure of the fishery is announced and when it is actually closed, which would be at least seven calendar days. To the extent such temporal shifts occur, they could affect the seasonal timing of fish catches and deliveries to canneries. The timing of cannery deliveries by the U.S. fleet alone (as it might be affected by a race to fish in the EEZ or high seas) is unlikely to have an appreciable impact on prices, because many canneries in the Asia-Pacific region and elsewhere buy from the fleets of multiple nations. A race to fish could bring costs to affected entities if it causes vessel operators to forego vessel maintenance in favor of fishing or to fish in weather or ocean conditions that they otherwise would not. This could bring costs in terms of the health and safety of the crew as well as the economic performance of the vessel.

4. Eastern High Seas Special Management Area

This element of the proposed rule would remove a reporting/recordkeeping requirement, the requirement to notify NMFS when entering and exiting the EHSSMA. It would also establish a prohibition on transshipment in the EHSSMA.

Fulfillment of this element's requirements is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with the requirements are described below to the extent possible.

Regarding the entry/exit notices, when NMFS established the requirement in 2012 (final rule published December 3, 2012; 77 FR 71501), it estimated that each report would require about 15 minutes of labor (at a labor cost of about $60 per hour) and no more than $1 in communication costs, for an estimated total cost of compliance of about $16 per notice. At that time, NMFS estimated that each longline vessel would enter and exit the EHSSMA between zero and approximately four times per year (requiring 0–8 notices per year at an annual cost of $0–128), each purse seine vessel would do so between zero and approximately two times per year (requiring 0–4 notices per year at an annual cost of $0–64), and each albacore troll vessel would do so between zero and two times per year (requiring 0–4 notices per year at an annual cost of $0–64). According to the notices received by NMFS, zero longline vessels and zero albacore troll vessels have entered the EHSSMA from 2013 through 2017, and there have been nine entries/exits by purse seine fishing vessels. In any case, under the proposed rule, commercial fishing vessels would be relieved of about $16 in compliance costs each time they enter or exit the EHSSMA.

Disproportionate Impacts

As described above, the type of the impacts would vary greatly among fishing gear types (*i.e.,* longline versus albacore troll versus purse seine), and the magnitude of the impacts also could vary greatly by fishing gear type (but they are difficult to quantify and compare). Nevertheless, all the affected entities in the longline and albacore troll fishing sectors are small entities, so there would be no disproportionate impacts between small and large entities within those sectors. In the purse seine fishing sector, slightly more than half the affected entities are small entities. The direct effect of the proposed rule would be to constrain fishing effort by purse seine fishing vessels, with consequent constraining effects on both revenues (because catches would be less) and operating costs (because less fishing would be undertaken). Although some purse seine fishing entities are larger than others, NMFS is not aware of any differences between the small entities and the large entities (as defined by the RFA) in terms of their capital costs, operating costs, or other aspects of their businesses. Accordingly, there is no information to suggest that the direct adverse economic impacts on small purse seine entities would be disproportionately greater than those on large purse seine entities.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that duplicate, overlap with, or conflict with the proposed regulations.

Alternatives to the Proposed Rule

NMFS has sought to identify alternatives that would minimize the proposed rule's economic impacts on small entities (''significant alternatives''). Taking no action could result in lesser adverse economic impacts than the proposed action for affected entities (but as described below, for some affected longline entities, the proposed rule could be more economically beneficial than no-action), but NMFS does not prefer the no-action alternative, because it would be inconsistent with the United States' obligations under the Convention. Alternatives identified for each of the four elements of the proposed rule are discussed below.

1. Longline Bigeye Tuna Catch Limits

NMFS has not identified any significant alternatives for this element of the proposed rule, other than the no-action alternative.

2. FAD Restrictions

NMFS considered in detail one alternative to this element of the proposed rule, but only with respect to the timing of the two-month FAD closure for the high seas. CMM 2017–01 allows members to choose either November–December, as in this proposed rule, or April–May. NMFS has compared the expected direct economic impacts of the two alternatives on purse seine fishing businesses in the regulatory impact review for the proposed rule. The analysis finds that a November–December closure is more likely to have a lesser direct economic impact on those businesses than an April–May closure, primarily because the later closure period is more likely to run concurrently with a closure of the high seas in the Convention Area to purse seine fishing (if the fishing effort limit in this proposed rule is reached), in which case the FAD closure would bring no additional economic impacts.

3. Purse Seine Fishing Effort Limits

In the past, NMFS implemented the U.S. purse seine fishing effort limits on the high seas and in the U.S. EEZ adopted by the Commission as a single combined limit in the ELAPS. For this

proposed rule, in light of CMM 2017–01's provision allowing the United States to transfer some of its EEZ fishing days to the high seas, there is a need to separately account for the U.S. high seas limit and the U.S. EEZ limit. Thus, combining the two limits into a single limit for the ELAPS is not a practical alternative, and NMFS has not considered it in detail.

4. Eastern High Seas Special Management Area

NMFS has not identified any significant alternatives for this element of the proposed rule, other than the no-action alternative.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the daily report of purse seine effort information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–5806. 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: May 4, 2018.

Samuel D. Rauch, III,

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

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

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 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, add definition ''Active FAD'' to read as follows:

§ 300.211 Definitions.

* * * * *

Active FAD is a FAD that is equipped with a buoy with a clearly marked reference number allowing its identification and equipped with a satellite tracking system to monitor its position.

* * * * *

■ 3. In § 300.217, revise paragraph (b)(1) to read as follows:

§ 300.217 Vessel identification.

* * * * *

(b) * * *

(1) Vessels shall be marked in accordance with the identification requirements of § 300.336(b)(2), and if an IRCS has not been assigned to the vessel, then the Federal, State, or other documentation number used in lieu of the IRCS must be preceded by the characters ''USA'' and a hyphen (that is, ''USA-'').

* * * * *

■ 4. In § 300.218, revise paragraphs (a)(2)(v) and (g) to read as follows:

§ 300.218 Reporting and recordkeeping requirements.

* * * * *

(a) * * *

(2) * * *

(v) *High seas fisheries.* Fishing activities subject to the reporting requirements of § 300.341 must be maintained and reported in the manner specified in § 300.341(a).

* * * * *

(g) *Daily purse seine fishing effort reports.* If directed by NMFS, the owner or operator of any fishing vessel of the United States equipped with purse seine gear must report to NMFS, for the period and in the format and manner directed by the Pacific Islands Regional Administrator, within 24 hours of the end of each day that the vessel is at sea in the Convention Area, the activity of the vessel (*e.g.,* setting, transiting, searching), location and type of set, if a set was made during that day.

* * * * *

■ 5. In § 300.222, revise paragraphs (v), (w), (oo), and (pp) as follows:

§ 300.222 Prohibitions.

* * * * *

(v) Use a fishing vessel equipped with purse seine gear to fish in an area closed to purse seine fishing under § 300.223(a).

(w) Set a purse seine around, near or in association with a FAD or a vessel, deploy, activate, or service a FAD, or use lights in contravention of § 300.223(b).

* * * * *

(oo) Transship in the Eastern High Seas Special Management Area in contravention of § 300.225.

(pp) Fail to submit, or ensure submission of, a daily purse seine fishing effort report as required in § 300.218(g).

* * * * *

■ 6. In § 300.223, revise paragraphs (a), (b)(1) and (2), and add paragraph (b)(3) to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(a) *Fishing effort limits.* This paragraph establishes limits on the number of fishing days that fishing vessels of the United States equipped with purse seine gear may operate in the Convention Area in the area between 20° N latitude and 20° S latitude in a calendar year.

(1) For the high seas there is a limit of 1,370 fishing days per calendar year.

(2) For the U.S. EEZ there is a limit of 458 fishing days per calendar year. If NMFS expects that this limit will be reached by October 1 in a given calendar year, NMFS will publish a notice in the **Federal Register** increasing the limit for that calendar year to 558 fishing days no later than seven days prior to October 1.

(3) NMFS will determine the number of fishing days spent on the high seas and in the U.S. EEZ in each calendar year using data submitted in logbooks and other available information. After NMFS determines that a limit in a calendar year is expected to be reached by a specific future date, and at least seven calendar days in advance of the closure date, NMFS will publish a notice in the **Federal Register** announcing that the purse seine fishery

in the area where the limit is expected to be reached will be closed starting on that specific future date and will remain closed until the end of the calendar year.

(4) Once a fishery closure is announced pursuant to paragraph (a)(3) of this section, fishing vessels of the United States equipped with purse seine gear may not be used to fish in the closed area during the period specified in the **Federal Register** notice, except that such vessels are not prohibited from bunkering during a fishery closure.

* * * * *

(b) * * *

(1) During the periods and in the areas specified in paragraph (b)(2) of this section, owners, operators, and crew of fishing vessels of the United States equipped with purse seine gear shall not do any of the activities described below in the Convention Area in the area between 20° N latitude and 20° S latitude:

(i) Set a purse seine around a FAD or within one nautical mile of a FAD.

(ii) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours, or setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel.

(iii) Deploy a FAD into the water.

(iv) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that:

(A) A FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and

(B) A FAD may be removed from the water and if removed may be repaired, cleaned, maintained, or otherwise serviced, provided that it is not returned to the water.

(v) From a purse seine vessel or any associated skiffs, other watercraft or equipment, do any of the following, except in emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage:

(A) Submerge lights under water;

(B) Suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment, or;

(C) Direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew.

(2) The requirements of paragraph (b)(1) of this section shall apply:

(i) From July 1 through September 30, in each calendar year;

(ii) In any area of high seas, from November 1 through December 31, in each calendar year.

(3) *Activating FADs for purse seine vessels.* (i) A vessel owner, operator, or crew of a fishing vessel of the United States equipped with purse seine gear shall turn on the tracking equipment of an active FAD while the FAD is onboard the vessel and before it is deployed in the water.

(ii) *Restrictions on Active FADs for purse seine vessels.* U.S. vessel owners and operators of a fishing vessel of the United States equipped with purse seine gear shall not have more than 350 drifting active FADs per vessel in the Convention Area at any one time.

* * * * *

■ 7. In § 300.224, revise paragraph (a)(1) and remove paragraph (a)(2) to read as follows:

§ 300.224 Longline fishing restrictions.

(a) * * *

(1) There is a limit of 3,554 metric tons of bigeye tuna per calendar year that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States.

* * * * *

■ 8. Revise § 300.225 to read as follows:

§ 300.225 Eastern High Seas Special Management Area.

The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS is prohibited from engaging in transshipment in the Eastern High Seas Special Management Area.

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