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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

**50 CFR Part 300**

**[Docket No. 150122068-5868-02]**

**RIN 0648-BE84**

**International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Effort and Catch Limits and other Restrictions and Requirements**

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

**ACTION:** Final rule; final specifications.

**SUMMARY:** NMFS issues a final rule and final specifications under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act). The final rule establishes a framework under which NMFS will specify limits on fishing effort and catches, as well as spatial and temporal restrictions on particular fishing activities and other requirements, in U.S. fisheries for highly migratory fish species in the western and central Pacific Ocean (WCPO). NMFS will issue the specifications as may be necessary to implement conservation and management measures adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC). The

final rule also requires that certain U.S. fishing vessels operating in the WCPO obtain “IMO numbers.” The final rule also includes changes to regulations regarding tuna catch retention requirements for purse seine vessels, requirements to install and carry vessel monitoring system (VMS) units, daily reporting requirements, and other changes that are administrative in nature.

Using the regulatory framework described above, NMFS also issues final specifications for 2015 that restrict the use of fish aggregating devices (FADs) by purse seine vessels.

These actions are necessary to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

**DATES:** Effective *[Insert date 60 days after date of publication in the FEDERAL REGISTER]*, except for the amendments to §§ 300.222(xx) and 300.227, and the final specifications for 2015, which shall be effective October 1, 2015.

**ADDRESSES:** Copies of supporting documents prepared for this final rule, including the proposed rule, the regulatory impact review (RIR), and the programmatic environmental assessment (PEA), are available via the Federal e-Rulemaking Portal, at *www.regulations.gov* (search for Docket ID NOAA-NMFS-2015-0072). Those documents are also available from NMFS at the following address: Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

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

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

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

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 23, 2015, NMFS published a proposed rule and proposed specifications in the **Federal Register** (80 FR 43694) to revise regulations at 50 CFR part 300, subpart O, and to specify limits for 2015, to implement decisions of the Commission. The proposed rule and proposed specifications were open for public comment through August 7, 2015.

This final rule and final specifications are issued under the authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), which 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 Secretary of Commerce may, in certain cases,

promulgate such regulations in accordance with the procedures established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*; MSA), but that is not being done in this case. The authority to promulgate regulations under the WCPFC Implementation Act has been delegated to NMFS.

The regulations established in this final rule are described below under “New Regulations” and the final specifications are described below under “Final Specifications for 2015.” The preamble to the proposed rule and proposed specifications includes detailed background information, including information on the Convention and the Commission, the decisions of the Commission that are being implemented, and the bases for the proposed rule and specifications, which are not repeated here.

Participants in the Commission include Members, Participating Territories, and Cooperating Non-Members. The United States is a Member. American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), and Guam are Participating Territories. In this document, the term “member” is used to refer to all such participants generally.

### **New Regulations**

This final rule includes several elements, described in detail below under three categories, that will be included in the regulations at 50 CFR 300, Subpart O. The first establishes a framework to implement Commission decisions, the second requires that certain fishing vessels be issued International Maritime Organization (IMO) numbers, and the third makes changes to several existing regulations to implement Commission decisions, some of which are administrative in nature.

#### *1. Framework to implement Commission decisions*

This final rule establishes a framework under which NMFS will specify fishing effort limits, catch limits, and other restrictions and requirements in U.S. fisheries for highly migratory species (HMS) in the Convention Area as may be necessary to implement particular decisions of the Commission. The framework will be used to implement only those Commission decisions that are amenable to the framework process, such as quantitative fishing effort limits and catch limits, and spatial and/or temporal restrictions on specific fishing activities. NMFS may implement Commission decisions through regulations outside the framework process, as in the past. For the purpose of describing the framework, all such restrictions and requirements are called “limits.”

NMFS also notes that under the WCPFC Implementation Act, in cases where there is discretion in the implementation of one or more measures adopted by the Commission that would govern fisheries under authority of a Regional Fishery Management Council, NMFS may, to the extent practicable within the implementation schedule of the Convention and any recommendations and decisions adopted by the Commission, promulgate such regulations in accordance with the procedures established by the MSA.

*Purpose of framework:* The purpose of a framework is to make it possible to manage fisheries more responsively under conditions requiring “real time” management. Such conditions exist in the context of the Convention because the Commission makes decisions that must be implemented by its members quickly—often within 60 days of the decision. The framework will allow NMFS to implement Commission decisions more rapidly than it would be able to without such a framework. The framework, to be codified at 50 CFR part 300, Subpart O, contains the parameters within which NMFS can take

specific actions, including the types of actions it could take, as well as the procedures for doing so. Limits implemented by NMFS under the framework, called “specifications,” will be announced in the **Federal Register**. Except when warranted and allowed by law, specifications will be subject to prior public notice and comment. The limits specified under the framework will likely, but not always, be time-limited.

*Types and details of limits:* The types of limits that will be specified under the framework include quantitative limits on the weight or number of fish that may be caught, retained, transshipped, landed, and/or sold; quantitative limits on the amount of fishing effort that may be expended, such as in terms of amounts of time vessels spend at sea or engaged in fishing or engaged in particular fishing activities or other measures of fishing effort, such as the number of gear sets or deployments of gear; and restrictions or prohibitions on particular fishing activities in certain areas and/or periods.

Most recent Commission decisions do not apply in territorial seas or archipelagic waters. Accordingly, the framework regulations state that any specified limit will not—unless otherwise indicated in the specification—apply in the territorial seas or archipelagic waters of the United States or any other nation, as defined by the domestic laws and regulations of that nation and recognized by the United States. If a Commission decision does apply in territorial seas and/or archipelagic waters, the specification issued by NMFS to implement that decision will specify that it does apply in those areas.

For each limit specified under the framework, NMFS will identify the area and period in which it applies, and as appropriate, the vessel types, gear types, species, fish sizes, and any other relevant attributes to which it applies. For spatial or temporal limits, NMFS will also specify the specific activities that would be restricted in the area or

period, and for quantitative limits, NMFS will specify the restrictions and requirements that would go into effect after the limit is reached and the applicable dates of those restrictions and requirements. These restrictions and requirements could include a prohibition on the catch, retention, transshipment and/or landing of specific species or specific sizes of specific species, a prohibition on the use of specific fishing gears or methods, restrictions on specific fishing activities, and reporting or other requirements.

*Fisheries affected:* In the decisions of the Commission, the three territories of the United States that participate in the Commission (“Participating Territories”)—American Samoa, the CNMI, and Guam—often are treated separately from the United States. For example, the fisheries of the territories often are subject to different controls and limits than are the fisheries of the United States. Therefore, to implement certain Commission decisions, it is necessary to distinguish the fisheries from each other because fishing vessels from the Participating Territories are flagged vessels of the United States.

The proposed regulatory framework included criteria to distinguish the fisheries from each other, for the purpose of attributing fishing effort and catch among the fisheries, and determining to which vessels a given restriction applies. This final rule does not include any such criteria, for the reasons explained in the section below titled “Changes from the Proposed Rule and Proposed Specifications.” NMFS may re-propose the criteria at a later time. In the meantime, any criteria that are needed to determine the vessels to which a specified limit applies, or to attribute catch or fishing effort against a specified limit, will be included in the specifications issued under the framework.

*Allocation of limits:* Under the framework, NMFS can allocate a Commission-adopted limit among different fisheries sectors, such as among groups of

fishing vessels that use different types of fishing gear. For example, given a Commission decision to limit catches of a particular species irrespective of the type of fishing gear used to catch it, NMFS can decide to allocate the limit between the longline and the purse seine fisheries, using the framework to establish specific limits for each of the two fisheries. NMFS can also use the framework to specify limits for particular fisheries even when the Commission-adopted limit is not specific to particular fisheries.

The framework will not be used to allocate Commission-adopted limits among individual fishing vessels (except in the case where a single fishing vessel comprises an entire sector or fishery). This does not preclude NMFS from allocating Commission-adopted limits among individual fishing vessels through separate regulations.

*Framework procedures:* The framework's procedures for specifying limits is as follows: NMFS will publish in the **Federal Register** a notice of the proposed specification and a request for public comment on the proposed specification. The proposed specification will include all the relevant characteristics of the limit. After consideration of public comment received on the proposed specification, NMFS will publish in the **Federal Register** a notice of the final specification. NMFS anticipates issuing specifications generally on a year-by-year basis. If limits of longer duration than one year are needed, NMFS anticipates publishing such limits in the Code of Federal Regulations.

*Consequences of limits being reached:* For quantitative limits, NMFS will monitor catch or fishing effort with respect to the specified limit using data submitted in vessel logbooks and other available information. When NMFS estimates or projects that



the specified limit has been or will be reached, NMFS will publish a notification to that effect in the **Federal Register**. For quantitative limits, this notification will include an advisement that specific activities will be restricted, and/or that certain requirements will be in place, during a specific period. The notification will specify the restrictions and requirements and the specific activities to which they apply and the start and end dates and times of those restrictions. The start date of the restrictions and requirements will not be earlier than 7 days after the date of filing the closure notice for public inspection at the Office of the **Federal Register**.

## *2. Requirement to obtain International Maritime Organization (IMO) number*

This element of the rule applies to all U.S. fishing vessels (including those participating in the fisheries of the U.S. Participating Territories) that are used for commercial fishing for highly migratory fish stocks in the Convention Area either on the high seas or in waters under the jurisdiction of a foreign nation, and the gross tonnage of which is at least 100 GRT (gross register tons) or 100 GT (gross tons) ITC.

The owner of any such fishing vessel is required to ensure that an “IMO number” has been issued for the vessel.

An “IMO number,” as used in this rule, is the number—sometimes called an IMO ship identification number—issued for a ship or vessel under the ship identification number scheme established by the International Maritime Organization. Currently, IMO numbers are issued on behalf of the IMO by IHS Maritime, the current administrator of the IMO ship identification number scheme. A vessel owner may request that an IMO number be issued by following the instructions given by IHS Maritime, available at: [www.imonumbers.lrfairplay.com/default.aspx](http://www.imonumbers.lrfairplay.com/default.aspx). There is no fee for making such a request

or having an IMO number issued, but specific information about the fishing vessel and its ownership and management must be provided to the administrator of the scheme.

Furthermore, for those fishing vessels for which an IMO number is required, obtaining an IMO number is a prerequisite for eligibility to receive a WCPFC Area Endorsement. The WCPFC Area Endorsement is the endorsement required—along with a high seas fishing permit—for a U.S. fishing vessel to be used for commercial fishing for HMS on the high seas in the Convention Area (see 50 CFR 300.212).

The regulations include a process for fishing vessel owners to claim to NMFS that they are unable—through no fault of their own—to obtain IMO numbers. When NMFS receives such a claim, it will review it and assist the fishing vessel owner as appropriate. If NMFS determines that it is infeasible or impractical for the fishing vessel owner to comply with the requirement, NMFS will issue an exemption from the requirement for a specific or indefinite amount of time. The exemption will become void if ownership of the fishing vessel changes.

### *3. Other regulatory changes*

The final rule includes several other changes to the existing regulations to enhance clarity and promote efficiency, some of which are administrative in nature.

First, this rule removes the regulations requiring that U.S. purse seine vessels carry WCPFC observers on fishing trips in the Convention Area (50 CFR 300.223(e)) because the applicable dates of the requirements, which extended through December 31, 2014, have passed. NMFS emphasizes that U.S. purse seine vessels operating in the Convention Area are, and will likely continue to be, subject to requirements to carry WCPFC observers under the current regulations at 50 CFR 300.215. Under this section,

U.S. fishing vessels operating in the Convention Area must carry a WCPFC observer when directed to do so by NMFS. NMFS has issued such directions to purse seine vessel owners for 2015, and anticipates doing so in subsequent years.

Second, this rule revises the definition of “fishing day” to remove the reference to 50 CFR 300.223. As it was previously defined at 50 CFR 300.211, the term applied only to the regulations at 50 CFR 300.223, “Purse seine fishing restrictions,” which establish limits on purse seine fishing effort, restrictions on the use of FADs, and other restrictions that apply to purse seine fishing. The term “fishing day” is now revised to apply more broadly to all the regulations in 50 CFR part 300, subpart O. “Fishing day” means, for fishing vessels equipped with purse seine gear, any day in which a fishing vessel 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.

Third, this rule removes certain elements of the existing regulations that require purse seine vessels in the Convention Area to retain on board all the catch of three species of tuna (bigeye tuna, yellowfin tuna, and skipjack tuna), with certain exceptions (specifically, 50 CFR 300.223(d)(1) and (2)), because they are obsolete.

Fourth, this rule makes changes to the requirements related to the installation and operation of vessel monitoring system (VMS) units on fishing vessels that are used to fish commercially for HMS on the high seas in the Convention Area. The previous regulations at 50 CFR 300.219 required the owner and the operator (i.e., the master or other individual aboard and in charge of the vessel) of any such vessel to expressly authorize NMFS and the Commission to receive and relay transmissions from the VMS

unit. Those regulations are now revised to provide NMFS and the Commission with authorization to receive and relay transmissions from the unit. In other words, an explicit written authorization from the vessel owner and operator is not needed for NMFS and the Commission to receive and relay transmissions from the VMS unit.

Finally, this rule makes changes to the requirement for the owners or operators of U.S. purse seine vessels to submit to NMFS daily reports on how many sets were made on FADs. These daily FAD reports enable NMFS to monitor the number of purse seine sets on FADs (“FAD sets”) to determine if they are within the established limits. This reporting requirement, at 50 CFR 300.218(g), was previously written such that it would only go into effect when NMFS publishes a notice in the **Federal Register** announcing that it is in effect. In this rule, NMFS has removed the requirement for the publication of a **Federal Register** notice. Instead, vessel owners and operators will be required to submit the daily FAD reports only if directed to do so by NMFS. NMFS may contact vessel owners or operators directly with instructions on the timing and submission of the reports. NMFS anticipates directing vessel owners or operators to submit the reports only in periods during which limits on FAD sets are in place. Under the revised reporting requirement, 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, within 24 hours of the end of each day that the vessel is at sea in the Convention Area, the number of purse seine sets that were made on FADs during the period and in the format and manner directed by the NMFS Pacific Islands Regional Administrator.

#### **Final Specifications for 2015**

Using the framework established at 50 CFR 300.227, as described above, NMFS issues specifications for 2015 to implement particular provisions of Conservation and Management Measure (CMM) 2014-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean."

#### *4. Purse seine FAD restrictions*

*Final specification for 2015:* From July 1 through October 31, 2015, owners, operators, and crew of fishing vessels of the United States 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, 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.
- 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) 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 cleaned, provided that it is not returned to the water.

5) 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.

### **Comments and Responses**

NMFS received comments on the proposed rule from two entities. The comments are summarized below, followed by responses from NMFS.

*Comment 1:* The Hawaii Longline Association (HLA) commented that it understands the proposed rule would establish a framework to establish specifications and related items only for the United States, not for its territories. Specifications applicable to the territories are established through the regulations implementing Amendment 7 to the Fishery Ecosystem Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FEP), which require the annual issuance of specifications applicable to the territories that include catch limits, and caps on the amounts of those limits that may be allocated to eligible U.S. longline fishing vessels.

*Response:* NMFS could issue specifications under the framework for fisheries of the U.S. Participating Territories as well as for fisheries of the United States. Although the framework established under Amendment 7 to the Pelagics FEP may be used to establish Commission-adopted limits on catch or fishing effort in the fisheries of the U.S.

Participating Territories, it does not preclude NMFS from using other means to establish such limits, such as the framework established in this rule, should they be necessary to carry out obligations under the WCPFC Implementation Act.

*Comment 2:* The HLA expressed concerns about the purpose or need for the proposed rule. If the basis for the proposed rule is NMFS' belief that implementing U.S. obligations under the Convention under this framework will be more efficient than the past practice of issuing regulations on a case-by-case basis, that is not fully explained in the proposed rule. The HLA is concerned that promulgation of another regulatory framework will result in a superfluous administrative process that will be misused by advocacy organizations that wish to end all tuna fishing. If the proposed rule will not result in significant and measurable increases in the efficiency of the regulatory process, or if it will result in more frequent agency decisions, each of which can be challenged, then the HLA recommends that NMFS not move forward with the proposed rule, as it may cause more problems than benefits for the agency and the regulated fisheries.

*Response:* The purpose of a framework is to make it possible for NMFS to manage fisheries more responsively and more efficiently under conditions requiring "real time" management. Such conditions exist in the context of the Convention because the Commission makes decisions that must be implemented by its members quickly—often within 60 days of the decision. The framework will not create any additional administrative process. The internal procedures of NMFS and the Department of Commerce are such that NMFS expects that specifications under the framework can be developed, proposed, and finalized more quickly than stand-alone regulations (but the provisions for prior public notice and comment are essentially the same for both

methods). This is because whenever NMFS issues a proposed or final specification, the framework, which establishes parameters on the scope and nature of the specifications that can be issued, will have already been approved. However, establishment of this framework will not preclude NMFS from implementing Commission decisions through regulations outside the framework process, as it has done in the past, so NMFS can choose the most appropriate approach in any given case.

*Comment 3:* The HLA commented that the proposed rule does not explain what analyses NMFS will conduct before utilizing the framework procedures to establish allocations of catch, effort, or other limits among U.S. fisheries. The HLA is concerned that a framework approach will not be appropriate for dividing a national allocation among various U.S. fisheries. Allocations would be very controversial and disruptive to fisheries. The HLA urges the United States to discuss with its constituents, including the processes of the Western Pacific Fishery Management Council, how and by whom the allocation decisions, and the accompanying analyses, should be made before launching into a new framework process to make allocation decisions.

*Response:* Specification of a limit under this framework, including limits involving allocations among sectors or groups of fishing vessels, would be subject to the same analyses that would be needed were the decision to be made outside this framework. Establishment of this framework will not preclude NMFS from taking action through regulations outside the framework process, as it has done in the past, so NMFS can choose the most appropriate approach in any given case. Furthermore, one of the options available under the WCPFC Implementation Act is to promulgate regulations in



accordance with the procedures established by the MSA that involve the Regional Fishery Management Councils.

*Comment 4:* The HLA commented that if NMFS proceeds to finalize the proposed rule, NMFS should ensure that the final rule is entirely consistent with the Amendment 7 framework and does not undermine NMFS' ability to promptly carry out its obligations under that framework in a straightforward manner, and to ensure that it does not create more obstacles for the Amendment 7 regulatory process.

*Response:* NMFS believes this final rule is consistent with the Amendment 7 framework, and does not anticipate that it would impede NMFS' implementation of actions under the Amendment 7 framework. NMFS notes that proposed § 300.227(d), titled "U.S. and territorial fisheries," which included a reference to the regulations implementing Amendment 7 of the Pelagics FEP, is not included in these final regulations. The reasons for not finalizing that element of the proposed framework are explained in the section below, "Changes from the Proposed Rule and Proposed Specifications."

*Comment 5:* The HLA offered its interpretation of the proposed provisions relevant to the catch allocation of "dual-permitted" longline vessels (i.e., those registered under a valid American Samoa Longline Limited Access Permit in addition to a Hawaii Longline Limited Access Permit). The HLA's interpretation is that in the circumstance where a specified fishing agreement under Amendment 7 with the CNMI or Guam is in effect, the catch of a dual-permitted vessel listed in the agreement that occurs outside the U.S. EEZ is attributed to American Samoa unless and until the American Samoa quota is exhausted, at which time such catch would be attributed to the territory (e.g., the CNMI

or Guam) identified in the agreement. Conversely, in this circumstance, the catch of a dual-permitted vessel that occurs inside the U.S. EEZ is attributed to the territory (e.g., the CNMI or Guam) identified in the agreement.

*Response:* NMFS disagrees with HLA's interpretation. However, as explained in the section below, "Changes from the Proposed Rule and Proposed Specifications," this final rule does not include the proposed rule's criteria for distinguishing among the fisheries. As proposed, the framework included three priority-ranked criteria for attributing fishing effort and catch to a fishery of one of the three U.S. Participating Territories. The catch of a vessel identified in a specified fishing agreement under 50 CFR 665.819 would be attributed to the U.S. Participating Territory that is party to the agreement, according to the terms of that agreement to the extent they are consistent with the MSA, Commission decisions, and the Pelagics FEP and its implementing regulations. The terms of a specified fishing agreement could not alter the attribution priorities that would have been established under the proposed regulations. Accordingly, as long as the conditions for attribution to a territory under the regulations implementing Amendment 7 to the Pelagics FEP (at 50 CFR 665.819(c)(9)) were met, the catch would be attributed to a fishery of the territory that is party to the agreement rather than to a fishery of American Samoa, regardless of where the fish is caught or landed. However, because NMFS' proposed attribution criteria generated considerable public confusion, this provision is not being finalized in this rulemaking.

*Comment 6:* The Center for Biological Diversity (CBD) provided comments stating that it is concerned that the process for attributing catch to the U.S. Participating Territories under the framework could contradict the Commission's conservation and

management measures regarding longline bigeye tuna catch limits. The CBD states that, specifically, portions of the framework seem to conflict with CMM 2014-01 as it relates to longline vessels' catch of bigeye tuna and attribution of catch. According to the CBD, the criteria specified in the framework for attributing catch to the U.S. Participating Territories may be at odds with the provisions of CMM 2014-01, which require catch attribution to the flag State of the vessel except for vessels notified as chartered under CMM 2011-05, for which the catch and fishing effort are attributed to the chartering Member or Participating Territory. The CBD notes that to its knowledge, no U.S.-flagged vessels have been notified as chartered under CMM 2011-05. Therefore, under the provisions of CMM 2014-01, catch of bigeye tuna by U.S.-flagged longline vessels should be attributed to the United States. CBD requests that NMFS amend the proposed language at 50 CFR 300.227(d) that establishes criteria for distinguishing the fisheries of the United States and fisheries of the U.S. Participating Territories to clarify that NMFS will follow Commission conservation and management measures regarding attribution of catch and effort.

*Response:* NMFS disagrees. Although the fisheries of the U.S. Participating Territories, including American Samoa, the CNMI, and Guam, operate under the United States' flag, Commission decisions have consistently treated them separately from the United States for purposes of adopting bigeye tuna catch limits in longline fisheries. CMM 2014-01 requires that bigeye tuna catches in the longline fisheries of the United States be limited to specified levels, based on a percentage of the fisheries' 2004 catch. However, CMM 2014-01 does not include any bigeye tuna catch limits for the longline fisheries of the U.S. Participating Territories (or for the longline fisheries of any other

Participating Territory or small island developing State (SIDS) member of the Commission). There are a number of reasons for this. Convention Article 30 requires the Commission to give “full recognition to the special requirements of developing states ... in particular small island developing states ... and territories” and requires that Commission decisions “not result in transferring ... a disproportionate burden of conservation action onto ... territories.” Accordingly, the Commission has consistently exempted Participating Territories from bigeye tuna catch limits in longline fisheries. Further, CMM 2013-06 requires the Commission to determine the “nature and extent of the impact” of any new conservation and management proposal on Territories prior to implementation. The fact that the Commission has never undertaken this analysis further refutes the commenter’s belief that Participating Territories have been subsumed in their host nations’ bigeye tuna catch limits. Finally, NMFS interprets paragraph 7 of CMM 2014-01 to specifically exempt Participating Territories from the longline limits established in paragraph 40.

The Commission has not adopted guidance—for the purpose of implementing flag-based limits—on attributing fishing activity in cases where a Participating Territory does not have its own flag, leaving member States considerable discretion to implement their own domestic practices and policies. The proposed rule included criteria to distinguish the fisheries from each other, such as to determine the vessels to which a specified limit applies or to attribute catch or fishing effort against a specified limit. However, as explained in the section below, “Changes from the Proposed Rule and Proposed Specifications,” this final rule does not include the proposed rule’s criteria for distinguishing among the fisheries.

CMM 2012-05 (formerly CMM 2011-05) establishes procedures for Commission Members and Participating Territories to notify the Commission of vessels flagged to another State or Fishing Entity that they have chartered, leased, or entered into other mechanisms. This measure does not apply to vessels operating under specified fishing agreements under Amendment 7 to the Pelagics FEP because such vessels are neither chartered nor leased to the U.S. Participating Territories.

*Comment 7:* The CBD states that tuna longline fishing jeopardizes the health of Hawaii's pelagic ecosystem and that ending bigeye tuna overfishing is critical to stopping and reversing changes in the ecosystem. The Commission's Scientific Committee has determined that WCPO bigeye tuna are overfished, yet fishing mortality rates remain too high, allowing overfishing to further reduce the population. NMFS has not considered the potential environmental impacts of the framework, specifically what could happen if the framework enabled continued fishing for bigeye tuna even after the U.S. catch limit is reached for all U.S.-flagged longline vessels by allowing for attribution of catch to the U.S. Participating Territories. The framework would allow exemptions from bigeye tuna catch limits via transfer agreements with the Hawaii-based longliners that effectively allow the longline vessels to fish unconstrained by effort limits, which will exacerbate the ecosystem and species-level impacts.

The CBD further states that the expansion of the Hawaii-based deep-set longline fishery has been encouraged by allowing exemptions to the Commission's bigeye tuna catch limit. Prior to 2014, the Hawaii-based longline fleet had never exceeded the U.S. catch limit by more than 771 metric tons (mt), leading NMFS to assume last year that, going forward, no more than 1,000 mt of bigeye tuna would be transferred annually under

specified territory fishing agreements. In practice, in 2014, the first year that a rule codifying quota shifting from Hawaii-based longliners to the U.S. Participating Territories was in effect, the Hawaii-based longliners exceeded the U.S. catch limit by more than 1,000 mt, using an agreement with the CNMI and then caught 52 mt above and beyond the approved amount. This shows that the rule codifying the quota shifting increased bigeye tuna fishing mortality; this rule will do the same.

*Response:* This action establishes a framework process under which NMFS will specify fishing effort limits, catch limits, and other restrictions and requirements in U.S. fisheries for HMS in the Convention Area, as may be necessary to implement particular decisions of the Commission. As explained in the section below, “Changes from the Proposed Rule and Proposed Specifications,” this final rule does not include the proposed rule’s criteria for distinguishing the fisheries of the United States and the fisheries of the U.S. Participating Territories from each other under limits specified under the framework. The framework itself does not specify any longline limits for bigeye tuna, or authorize longline fishing for bigeye tuna after the U.S. limit is reached. Measures for establishing catch and fishing effort specifications in the territories, and allocation specifications, were established by regulations implementing Amendment 7 to the Pelagics FEP, and are not part of this action. This action does not specify any limits under the framework for longline fisheries.

The only specification being issued as part of this action is the purse seine FAD restrictions for 2015. The expected impacts of this specification on the human environment are analyzed in a programmatic environmental assessment that was made available in conjunction with the proposed rule and proposed specifications (see

**ADDRESSES**). Should NMFS use the framework process to specify catch limits for the longline fisheries of the United States or the U.S. Participating Territories, NMFS would complete the appropriate environmental analysis at that time. NMFS has determined that the framework process is categorically excluded from the need to prepare an environmental assessment or an environmental impact statement (EIS) as it is purely administrative and procedural in nature. The framework simply sets up an efficient process—which might or might not be used by NMFS—for implementing Commission decisions.

*Comment 8:* The CBD states that the framework, as it would apply to the bigeye tuna catch limits for longline vessels, exceeds NMFS' statutory authority under the WCPFC Implementation Act. According to the WCPFC Implementation Act, NMFS has authority to promulgate only those regulations necessary to carry out the international obligations of the United States under the Convention, including recommendations and decisions adopted by the Commission. Rather than attribute longline vessels' bigeye tuna catch according to the vessel's flag State, as required under CMM 2014-01, the framework would attribute longline bigeye tuna catch to the United States or a U.S. territory on the basis of port of landing, vessel registration, or inclusion of the vessel in a transfer agreement. These criteria are inconsistent with CMM 2014-01 and its predecessor CMM 2013-01. Both CMM 2013-01 and CMM 2014-01 establish a general rule that attribution of catch and effort shall be to the flag State and establish a single bigeye tuna catch limit for all U.S.-flagged longline vessels. Longline vessels in the fisheries of U.S. Participating Territories all operate under the U.S. flag, so they are all subject to the same, unified catch limit. The rule does not reconcile how the framework

criteria, which treat catch of different U.S.-flagged vessels differently, could implement the Commission's limits for longline vessels' bigeye tuna catch, which currently allocate catch to the flag State of the vessel. NMFS is legally obliged to implement Commission decisions, which currently call for all Commission members reduce their bigeye catch from current levels. It is not clear that the framework will fulfill this mandate by reducing catch for longline fishing for bigeye tuna in years after 2015.

*Response:* See responses to Comments 6 and 7, above. NMFS' response to Comment 6 as it relates to CMM 2014-01 also pertains to CMM 2013-01, which is essentially the same as CMM 2014-01 in terms of bigeye tuna catch limits in longline fisheries.

*Comment 9:* The CBD made several comments related to the National Environmental Policy Act and the Endangered Species Act (ESA).

The CBD states that NMFS should have prepared an EIS for the framework because of potentially significant environmental impacts and controversy. The framework's criteria for determining which fisheries are subject to the catch limits are not straightforward, which reduces transparency and creates controversy. Without any environmental analysis of the rule, the public lacks basic information needed to evaluate the framework's potential environmental impacts. For example, the notice does not specify how many vessels would fit under the criteria to attribute catch to the U.S. Participating Territories. Vessels permitted to land HMS in California, Oregon, and Washington can, under the framework, sell catch from the high seas in American Samoa, Guam, or the CNMI and have that catch be considered part of the fishery of the territory, but there are no estimates of how many vessels are permitted under 50 CFR 660.707 to



which this criteria might apply.

The CBD further states that NMFS has not studied the impact of allowing catch from the eastern Pacific Ocean (EPO) to be considered part of a territory's fishery, which requires not only an EIS but also consultation under the ESA. The framework and the exemptions from Commission catch limits will have unknown effects on endangered loggerhead and leatherback sea turtles because of increased fishing effort in the EPO, specifically on the high seas off California. The most recent Biological Opinion on the Hawaii-based deep-set longline fishery, completed in September 2014, did not anticipate longline fishing effort in the EPO. The Biological Opinion treats the catch in the EPO as incidental, although Hawaii-permitted longline vessels have been operating out of and landing their catch in San Diego. Where the fishery operates is critical to assessing impacts to endangered species. Without assessing where the fishing effort takes place—in the high seas off California or in the high seas around U.S. territories—NMFS cannot reliably estimate impacts to endangered sea turtles, and thus an EIS is necessary for this framework.

The CBD states that because the framework is potentially controversial as it could apply to bigeye tuna longline catch limits, NMFS must prepare an EIS. More than 4,000 public comments were submitted in response to NMFS' 2014 rule to establish the attribution of catch to the U.S. Participating Territories (see final rule published October 28, 2014; 79 FR 64097). This is evidence that this framework could be controversial when applied, even though due to the short 15-day comment period, this rule specifically is not likely to raise a similar level of interest. The litigation regarding NMFS' rule to implement the attribution of catch to the U.S. Participating Territories also demonstrates

the controversy associated with this aspect of the framework. Because the proposed rule would codify in a framework actions similar to what has already been challenged in court and subject to public protest, NMFS must prepare an EIS.

*Response:* As stated in the response to Comment 7, the framework does not establish specific fishing effort or catch limits. Because the framework is purely administrative and procedural in nature, NMFS has determined that its establishment is categorically excluded from the need to prepare an environmental assessment or an EIS. Due to its administrative nature, the framework itself will not contribute to any direct, indirect, or cumulative impacts. Should NMFS use the framework process to specify catch limits for longline fisheries, NMFS would complete the appropriate environmental and economic analyses when details of the proposed management action are known. For example, this action includes final specifications under the framework that establish restrictions on the use of FADs by purse seine vessels in 2015. That FAD-related action is supported by a programmatic environmental assessment that was made available in conjunction with the proposed rule and proposed specifications (see **ADDRESSES**).

NMFS has determined that the proposed framework regulations and associated specifications for 2015 will not affect any ESA-listed species in any manner not considered in prior consultations. The existing September 2014 Biological Opinion for the Hawaii deep-set longline fishery considered the effects of the fishery on ESA-listed species based upon the documented history of where the fishery operates. The fishery continues to operate at levels and in a manner analyzed in the Biological Opinion, and impacts to ESA-listed species remain within levels anticipated and authorized in the incidental take statement. Establishment of this framework, which is purely

administrative and procedural in nature, will not alter the operation of the fishery in any way, and therefore does not itself introduce effects of the action that were not considered in earlier consultations.

The reference in the proposed framework to fishing vessels with permits issued under 50 CFR 660.707 has to do with the attribution of catch and fishing effort with respect to the vessel that lands the fish, not the vessel that catches the fish. However, as explained in the section below, “Changes from the Proposed Rule and Proposed Specifications,” this final rule does not include that reference or the proposed rule’s criteria for distinguishing among the fisheries. More generally, NMFS does not expect that catches from the EPO will be subject to any WCPFC-adopted limits that might be established under the framework.

*Comment 10:* The CBD states that NMFS prohibited shallow-set longlines east of 150° W. longitude to protect sea turtles after a Biological Opinion found that allowing shallow sets for swordfish east of 150° W. longitude would appreciably reduce the likelihood of survival and recovery in the wild of loggerhead sea turtles. In April 2009, the Pacific Fishery Management Council discussed amending the fishery management plan to allow use of shallow-set longlines on the high seas, but expressed concerns about how to limit fishing effort based on the high number of inactive permits in the current swordfish fishery using gillnets. The Pacific Fishery Management Council’s concerns are not addressed by the framework, which allows vessels permitted to land in California to count their catch as part of a territory’s fishery when landing in the territory, vastly increasing fishing effort.

*Response:* The framework does not authorize any fishing activity that has not

already been analyzed under NEPA and the ESA. One of the proposed framework's criteria for distinguishing the fisheries of the U.S. Participating Territories from U.S. fisheries—for the purpose of Commission-adopted limits—was that if the catch is landed in a U.S. Participating Territory, it would be considered part of a fishery of that territory, provided that several conditions are met, one of which, would be that the vessel that *lands* the fish must be operated in compliance with a valid permit issued under 50 CFR 660.707 or 50 CFR 665.801. As explained above, this final rule does not include the proposed rule's criteria for distinguishing among the fisheries. Furthermore, NMFS does not expect that catches from the EPO will be subject to any WCPFC-adopted limits that might be established under this framework.

*Comment 11:* The CBD commented that its interpretation of the proposed criteria for distinguishing the fisheries of the United States from those of the U.S. Participating Territories was as follows: (1) except as provided in (2) and (3), below, if catch is landed in American Samoa, Guam, or the CNMI, the catch and associated fishing effort are considered part of the territory in which it is landed, with exceptions for catch from purse seines and catch from outside the part of the U.S. EEZ that surrounds the territory; (2) except as provided under (3), if the vessel is registered under an American Samoa Longline Limited Access Permit, the vessel's catch and effort are considered a part of a fishery of American Samoa as long as it was caught in the portion of the U.S. EEZ surrounding American Samoa and it was landed by a fishing vessel operated in compliance with a permit issued under 50 CFR 660.707 or 665.801; and (3) if the vessel is included in a specified fishing agreement under 50 CFR 665.819(c), the catch and effort are considered part of a fishery of American Samoa, Guam, or the CNMI,

according to the terms of the agreement.

*Response:* The CBD's interpretation of the proposed criteria for distinguishing the fisheries of the United States from those of the U.S. Participating Territories is not correct. Under the first two proposed criteria, catch would not necessarily have to be caught in the portion of the U.S. EEZ that surrounds the territory in order to be attributed to a fishery of that territory. For example, fish could be caught on the high seas and attributed to a territorial fishery if certain conditions were met. However, NMFS acknowledges, based on the comments from the CBD and the HLA, that there is public confusion over the meaning and effect of proposed paragraph 50 CFR 300.227(d). Furthermore, NMFS intended for the criteria, as they would apply to longline fisheries, to mirror those in existing regulations related to bigeye tuna catch limits in longline fisheries (at 50 CFR 300.224), but inadvertently wrote the proposed regulations such that they differed from those existing regulations. For these reasons, NMFS is not implementing this provision as proposed. As described in the "Changes from the Proposed Rule and Proposed Specifications" section, NMFS has not included in this final rule the proposed rule's criteria for distinguishing among the fisheries at 50 CFR 300.227(d).

#### **Changes from the Proposed Rule and Proposed Specifications**

NMFS has not made any changes from the proposed specifications for 2015.

NMFS has made five changes from the proposed rule.

First, after considering public comment, NMFS is not finalizing the proposed rule's paragraph (d) of 50 CFR 300.227, titled "U.S. and territorial fisheries." The proposed paragraph had included criteria to distinguish the fisheries of the U.S.

Participating Territories from the fisheries of the United States, such as to determine the vessels to which a specified limit applies or to attribute catch or fishing effort against a specified limit. Comments received on paragraph (d) indicate that there was public confusion over how to interpret the regulatory text and how the criteria would be prioritized. Based on the comments received and on NMFS' own review of the proposed rule text, NMFS finds that the proposed regulatory text at 50 CFR 300.227(d) was confusing to the public and did not afford adequate notice of the proposed criteria. Furthermore, NMFS intended for the criteria to mirror those in existing regulations related to bigeye tuna catch limits in longline fisheries (at 50 CFR 300.224), but inadvertently wrote the proposed regulations such that they differed from those existing regulations. For these reasons, NMFS has decided to finalize the framework without the proposed criteria. NMFS is not including the proposed text at 50 CFR 300.227(d) in the final rule, and may re-propose the criteria at a later time. In the meantime, any criteria that are needed to determine the vessels to which a specified limit applies, or to attribute catch or fishing effort against a specified limit, will be included in the specifications issued under the framework.

Second, NMFS has made non-substantial changes to paragraph (a) of 50 CFR 300.227, which sets out the purpose and general provisions for the framework. The changes make the paragraph align more closely with the language of the WCPFC Implementation Act, particularly to make clear that NMFS (through delegation of authority from the Secretary of Commerce) is authorized to promulgate such regulations as may be necessary to carry out the international obligations of the United States under the Convention and the WCPFC Implementation Act.

Third, NMFS has made non-substantial changes to paragraph (e) of 50 CFR 300.227, changing three instances of “Commission-mandated limit” to “Commission-adopted limit” to better reflect the responsibilities of the Secretary of Commerce and NMFS under the WCPFC Implementation Act.

Fourth, NMFS has made amendments to regulations at 15 CFR 902.1(b) to incorporate the approval of the collection of information requirements for IMO numbers.

Fifth, NMFS has made non-substantive technical modifications to 50 CFR 300.222 to take into consideration that different elements of the final rule go into effect at different times.

### **Delegation of Authority**

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

### **Classification**

The Administrator, Pacific Islands Region, NMFS, has determined that this final rule and these final specifications are consistent with the WCPFC Implementation Act and other applicable laws.

### *Administrative Procedure Act*

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on the amendments to regulations at 15 CFR 902.1(b), because it is unnecessary. This revision is an administrative change that modifies the CFR sections where the information collection requirements under current OMB control number 0648-0595 are located.

There is good cause under 5 U.S.C. 553(d)(3) to establish an effective date less than 30 days after date of publication for the final specifications for 2015 and for the framework element of the final rule (i.e., the addition of section 300.227 to Title 50 of the Code of Federal Regulations), as well as the new paragraph with prohibitions associated with the framework (i.e., 50 CFR 300.222(xx)). NMFS must establish the restrictions on the use of FADs by October 1, 2015, in order to comply with the provisions of CMM 2014-01 (restrictions on the use of FADs are also required under CMM 2014-01 for July 1 through September 30, 2015, but those restrictions have already been established through regulations at 50 CFR 300.223(b)). The restrictions are intended to reduce or otherwise control fishing pressure on bigeye tuna in the WCPO in order to restore this stock to levels capable of producing maximum sustainable yield on a continuing basis. According to the NMFS stock status determination criteria, bigeye tuna in the Pacific Ocean is currently experiencing overfishing. Failure to establish the FAD restrictions by October 1, 2015, would result in additional fishing pressure on this stock, in violation of international and domestic legal obligations. The final specifications for 2015 are issued under the regulatory framework established at 50 CFR 300.227, so to make the FAD restrictions effective by October 1, 2015, the framework and its associated prohibitions must also be made effective by that date.

*Executive Order 12866*

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

*Regulatory Flexibility Act (RFA)*

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA



incorporates the initial regulatory flexibility analysis (IRFA) prepared for the proposed rule and proposed specifications. The analysis in the IRFA is not repeated here in its entirety.

A description of the action, why it is being considered, 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 this final rule and final specifications, above. The analysis follows:

#### Significant Issues Raised by Public Comments in Response to the IRFA

NMFS did not receive any comments on the IRFA.

#### Description of Small Entities to Which the Rule and Specifications Will Apply

Small entities include “small businesses,” “small organizations,” and “small governmental jurisdictions.” The Small Business Administration (SBA) has established size standards for all major industry sectors in the United States, including commercial finfish harvesters (NAICS code 114111). A business primarily involved in finfish harvesting 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 \$20.5 million for all its affiliated operations worldwide.

The final rule and specifications apply to owners and operators of U.S. fishing vessels used for commercial fishing for HMS in the Convention Area. The framework establishes administrative procedures for implementing Commission decisions. It does not in itself establish any requirements for owners or operators of fishing vessels or other entities. With the exception of the requirement to obtain an IMO number, the substantive elements of the rule and specifications (i.e., those elements expected to bring economic

impacts to affected entities) apply only to purse seine vessels. NMFS estimates that of all the U.S. fishing vessels to which the IMO number requirement apply, only 7 do not already have an IMO number. Of the 7, 1 is a purse seine vessel, 4 are longline vessels, and 2 are troll vessels.

The number of purse seine vessels affected by the purse seine specifications is the number of vessels licensed under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (South Pacific Tuna Treaty, or SPTT). The current number of licensed vessels is 37. The maximum number allowed under the SPTT, apart from joint venture licenses, none of which have ever been issued, is 40.

Thus, the fish harvesting entities affected by the final rule and specifications include about 37 purse seine vessels, 4 longline vessels, and 2 troll vessels.

Based on (limited) available financial information about the affected fishing vessels and the SBA's small entity size standards for commercial finfish harvesters, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses are small entities. NMFS used average per-vessel returns over recent years to estimate annual revenue because gross receipts and ex-vessel price information specific to the affected vessels are not available to NMFS. For the purse seine fishery, NMFS estimates that the average annual receipts over 2010-2012 for each purse seine vessel were less than the \$20.5 million threshold for finfish harvesting businesses (the greatest was about \$19 million) based on the catches of each vessel in the purse seine fleet during that period, and indicative regional cannery prices developed by the Pacific Islands Forum Fisheries Agency (available at

<https://www.ffa.int/node/425#attachments>). Since 2012, cannery prices have declined dramatically, so the vessels' revenues in 2013 and 2014 have very likely declined as well. For the longline fishery, the ex-vessel value of catches by the Hawaii longline fleet in 2012 was about \$87 million. With 129 active vessels in that year, per-vessel average revenues were about \$0.7 million, well below the \$20.5 million threshold for finfish harvesting businesses.

#### Recordkeeping, Reporting, and Other Compliance Requirements

The recordkeeping, reporting, and other compliance requirements are discussed below for each of the main elements of the final rule and final specifications, as described earlier in the **SUPPLEMENTARY INFORMATION** section of the preamble.

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

##### *1. Framework to implement Commission decisions*

The framework establishes administrative procedures for implementing Commission decisions. It does not in itself establish any requirements for owners or operators of fishing vessels or other entities, so it is not discussed further in this FRFA.

##### *2. Requirement to obtain IMO number*

The requirement to obtain an IMO number is a one-time requirement; once a number has been issued for a vessel, the vessel would be in compliance for the remainder of its life, regardless of changes in ownership. Most entities that are required to obtain an IMO number already have them. NMFS estimates that 7 fishing vessels (that are currently in the fishery) are initially subject to the requirement, and projects that as

fishing vessels enter the fishery in the future, roughly two per year will be required to obtain IMO numbers. Completing and submitting the application form (which can be done online and requires no fees) is expected to take about 30 minutes per applicant, on average. Assuming a value of labor of approximately \$26 per hour and communication costs of about \$1 per application, the (one-time) cost to each entity are expected to be about \$14.

### *3. Other regulatory changes*

Among the final rule's other regulatory changes, only the change to the daily FAD reporting requirements has the potential to bring economic impacts to affected entities. Under the previous regulations, when NMFS triggered the daily FAD reporting requirement through an announcement in the **Federal Register**, the vessel owner or operator would have had to complete and submit the reports each day while the fishing vessel is at sea in the Convention Area. NMFS estimated that cost to be about \$1,360 per vessel per year. Under the change made in this rule, the vessel owner or operator has to complete and submit the reports only if and when directed by NMFS. Because the purse seine FAD restrictions for 2015 do not include any FAD set limits, it is unlikely that NMFS will direct vessel operators to submit reports for 2015. Thus, the change could potentially reduce the reporting costs to affected purse seine entities during this period.

### *4. Purse seine FAD restrictions*

The FAD prohibition period in July-October in 2015 will substantially constrain the manner in which purse seine fishing can be conducted in that period in the Convention Area; vessels will be able to set only on free, or "unassociated," schools.

The costs associated with the FAD restrictions cannot be quantitatively estimated,

but the fleet's historical use of FADs can give a qualitative estimate of the costs. In the years 1997-2013, the proportion of sets made on FADs in the U.S. purse seine fishery ranged from less than 30 percent in some years to more than 90 percent in others. Thus, the importance of FAD sets in terms of profits appears to be quite variable over time, and is probably a function of many factors, including 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). Thus, the costs of complying with the FAD restrictions will depend on a variety of factors.

In 2010-2013, the last 4 years for which complete data are available and for which there was 100 percent observer coverage, the U.S. WCPO purse seine fleet made about 39 percent of its sets on FADs. During the months when setting on FADs was allowed, the percentage was about 58 percent. The fact that the fleet has made such a substantial portion of its sets on FADs indicates that prohibiting the use of FADs for four months each year is likely to bring substantial costs and/or revenue losses.

To mitigate these impacts, vessel operators might choose to schedule their routine vessel and equipment maintenance during the FAD prohibition periods. However, the limited number of vessel maintenance facilities in the region might constrain vessel operators' ability to do this. It also is conceivable that some vessels might choose not to fish at all during the FAD prohibition periods rather than fish without the use of FADs. Observations of the fleet's behavior in 2009-2013, when FAD prohibition periods were in effect, do not suggest that either of these responses occurred to an appreciable degree.

The proportion of the fleet that fished during the two- and three-month FAD prohibition periods of 2009-2013 did not appreciably differ from the proportion that fished during the same months in the years 1997-2008, when no FAD prohibition periods were in place.

In summary, the economic impacts of the FAD prohibition period in 2015 cannot be quantified, but they could be substantial. Their magnitude will depend in part on market conditions, ocean conditions and the magnitude of any limits on allowable levels of fishing effort in foreign EEZs and on the high seas in the Convention Area.

#### Disproportionate Impacts

As indicated above, all affected entities are believed to be small entities, thus small entities will not be disproportionately affected relative to large entities. Nor will there be disproportionate economic impacts based on vessel size or home port. With respect to vessel type, the specifications for 2015 apply only to purse seine vessels, so they would not impact any other vessel types.

#### Steps Taken to Minimize the Significant Economic Impacts on Small Entities

NMFS has sought to identify alternatives that would minimize the rule's and specifications' economic impact on small entities ("significant alternatives"). Taking no action could result in lesser adverse economic impacts than the action for many affected entities, but NMFS has determined that the no-action alternative would fail to accomplish the objectives of the WCPFC Implementation Act, including satisfying the international obligations of the United States as a Contracting Party to the Convention, and NMFS has rejected it for that reason. Alternatives identified for each of the main elements of the rule and specifications are discussed below:

##### *1. Framework to implement Commission decisions*

The framework will not in itself establish any requirements for owners or operators of fishing vessels or other entities, so would not bring economic impacts. Thus, NMFS has not identified any significant alternatives.

#### *2. Requirement to obtain IMO number*

NMFS has not identified any significant alternatives to the IMO number requirement that would comport with U.S. obligations to implement the Commission decision regarding IMO numbers.

#### *3. Other regulatory changes*

None of the other regulatory changes are expected to bring adverse economic impacts to affected entities, so NMFS has not identified any significant alternatives.

#### *4. Purse seine FAD restrictions*

NMFS considered in detail one alternative to the restrictions on the use of FADs in 2015. Under the alternative, purse seine vessels would be subject to a 3-month (July-September) FAD prohibition period in 2015, and a limit of 2,522 FAD sets for the year. This alternative would be consistent with the options available to the United States under CMM 2014-01. The impacts of this alternative relative to those of the final action (4-month FAD closure) would depend on the total amount of fishing effort available to the U.S. purse seine fleet in the Convention Area in 2015. If total available fishing effort is relatively high, the final action (4-month FAD closure) would likely allow for more FAD sets than would this alternative, and thus likely cause lesser adverse impacts. The reverse would be the case for relatively low levels of total available fishing effort. For example, given the fleet's historical average FAD set ratio of 58 percent, and assuming an even distribution of sets throughout the year, the estimated "breakeven" point between

the two alternatives would be 6,502 total available sets for the year. Although the amount of fishing effort that will be available to the fleet in the future, particularly under the SPTT, cannot be predicted with any certainty, 6,502 sets is substantially less than the amounts of fishing effort that have been available to the fleet since it has been operating under the SPTT. For that reason, NMFS expects that the final action (4-month FAD closure) likely would cause less severe economic impacts on the purse seine fleet and its participants than would this alternative, and NMFS has rejected the alternative of a 3-month FAD closure in combination with a limit of 2,522 FAD sets for that reason.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. NMFS has prepared one or more small entity compliance guides for this rule and specifications, and will send them to holders of permits in the relevant fisheries. The guide(s) and this final rule also will be available at [www.fpir.noaa.gov](http://www.fpir.noaa.gov) and by request from NMFS PIRO (see **ADDRESSES**).

#### *Paperwork Reduction Act*

This final rule contains three collection-of-information requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

The first collection has been approved by the OMB under control number



0648-0595, “Western and Central Pacific Fisheries Convention Vessel Information Family of Forms.” This collection-of-information has been revised to include the requirement for the owners of certain fishing vessels to ensure that IMO numbers are issued for the vessels. This is a one-time requirement; no renewals or updates are required during the life of a vessel. A fishing vessel owner can request the issuance of an IMO number by submitting specific information about the vessel and its ownership and management to IHS Maritime, which issues IMO numbers on behalf of the International Maritime Organization. If a fishing vessel requires an exemption, the owner must provide the required information to NMFS. Providing the required information is expected to bring a public reporting burden of approximately 30 minutes per response.

The second collection, requirements related to installing and operating vessel monitoring system units, has been approved by OMB under control number 0648-0596, “Vessel Monitoring System Requirements under the Western and Central Pacific Fisheries Convention.” Public reporting burden for the VMS requirements is estimated to average 5 minutes per response for the activation reports and on/off reports, 4 hours per response for VMS unit purchase and installation, and 1 hour per response for VMS unit maintenance.

The third collection, the daily FAD reporting requirement, has been approved by OMB under control number 0648-0649, “Transshipment Requirements under the WCPFC.” Public reporting burden for the daily FAD report is estimated to average 10 minutes per response.

These estimated response times include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and

reviewing the collection of information.

Send comments regarding these burden estimates, or any other aspect of the data collections, including whether the collections are necessary for the performance of the functions of the agency, the accuracy of the agency's estimates of burden, ways to enhance the utility and clarity of information, and suggestions for reducing the burden, to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES**) and by e-mail to *OIRA\_Submission@omb.eop.gov* or fax to 202-395-7285.

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

**List of Subjects**

*15 CFR Part 902*

Reporting and recordkeeping requirements.

*50 CFR Part 300*

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

Dated: September 25, 2015

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 300 are amended as follows:

**Title 15—Commerce and Foreign Trade**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”, add an entry in alphanumeric order for “300.217” to read as follows::

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR:	
* * * * *	
300.217	-0595
* * * * *	

**Title 50—Wildlife and Fisheries**

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

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

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

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

4. In § 300.211, revise the definition of “Fishing day” to read as follows:

**§ 300.211 Definitions.**

\* \* \* \* \*

*Fishing day* means, for fishing vessels equipped with purse seine gear, any day in which a fishing vessel 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.

\* \* \* \* \*

5. In § 300.217, add paragraph (c) to read as follows:

**§ 300.217 Vessel identification.**

\* \* \* \* \*

(c) *IMO numbers.* (1) For the purpose of this section, an IMO number is the unique number issued for a vessel under the ship identification number scheme established by the International Maritime Organization or, for vessels that are not strictly subject to that scheme, the unique number issued by the administrator of that scheme using the scheme’s numbering format, sometimes known as a Lloyd’s Register number or LR number.

(2) The owner of a fishing vessel of the United States used for commercial fishing for HMS in the Convention Area, either on the high seas or in waters under the jurisdiction of any nation other than the United States, shall request and obtain an IMO number for the vessel if the gross tonnage of the vessel, as indicated on the vessel’s current Certificate of Documentation issued under 46 CFR part 67, is at least 100 GRT or

100 GT ITC. An IMO number may be requested for a vessel by following the instructions given by the administrator of the IMO ship identification number scheme; those instructions are currently available on the web site of IHS Maritime, at: [www.imonumbers.lrfairplay.com/default.aspx](http://www.imonumbers.lrfairplay.com/default.aspx).

(3) In the event that the owner of a fishing vessel subject to the requirement of paragraph (c)(2) of this section, after following the instructions given by the administrator of the IMO ship identification number scheme, is unable to obtain an IMO number for the fishing vessel, the fishing vessel owner may request an exemption from the requirement from the Pacific Islands Regional Administrator. The request must be sent by mail to the Pacific Islands Regional Administrator or by email to [pir.wcpfc@noaa.gov](mailto:pir.wcpfc@noaa.gov) and must include the vessel's name, the vessel's official number, a description of the steps taken to request an IMO number, and a description of any responses from the administrator of the IMO ship identification number scheme.

(4) Upon receipt of a request for an exemption under paragraph (c)(3) of this section, the Pacific Islands Regional Administrator will, to the extent he or she determines appropriate, assist the fishing vessel owner in requesting an IMO number. If the Pacific Islands Regional Administrator determines that it is infeasible or impractical for the fishing vessel owner to obtain an IMO number for the fishing vessel, he or she will issue an exemption from the requirements of paragraph (c)(2) of this section for the subject fishing vessel and its owner and notify the fishing vessel owner of the exemption. The Pacific Islands Regional Administrator may limit the duration of the exemption. The Pacific Islands Regional Administrator may rescind an exemption at any time. If an exemption is rescinded, the fishing vessel owner must comply with the requirements of

paragraph (c)(2) of this section within 30 days of being notified of the rescission. If the ownership of a fishing vessel changes, an exemption issued to the former fishing vessel owner becomes void.

6. In § 300.218, revise paragraph (g) to read as follows:

**§ 300.218 Reporting and recordkeeping requirements.**

\* \* \* \* \*

(g) *Daily FAD 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 number of purse seine sets were made on FADs during that day.

\* \* \* \* \*

7. In § 300.219, revise paragraphs (c)(1) and (5) to read as follows:

**§ 300.219 Vessel monitoring system.**

\* \* \* \* \*

(c) \* \* \*

(1) *VMS unit.* The vessel owner and operator shall install and maintain on the fishing vessel, in accordance with instructions provided by the SAC and the VMS unit manufacturer, a VMS unit that is type-approved by NMFS for fisheries governed under the Act. The vessel owner and operator shall arrange for a NMFS-approved mobile communications service provider to receive and relay transmissions from the VMS unit to NMFS. NMFS makes available lists of type-approved VMS units and approved mobile communications service providers. NMFS and the Commission are authorized to receive

and relay transmissions from the VMS unit.

\* \* \* \* \*

(5) *Related VMS requirements.* Installing, carrying and operating a VMS unit in compliance with the requirements in part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units shall be deemed to satisfy the requirements of paragraph (c) of this section, provided that the VMS unit is operated continuously and at all times while the vessel is at sea, the VMS unit is type-approved by NMFS for fisheries governed under the Act, and the specific requirements of paragraph (c)(4) of this section are complied with. If the VMS unit is owned by NMFS, the requirement under paragraph (c)(4) of this section to repair or replace the VMS unit will be the responsibility of NMFS, but the vessel owner and operator shall be responsible for ensuring that the VMS unit is operable before leaving port or starting the next trip.

\* \* \* \* \*

8. Amend § 300.222, effective October 1, 2015, by adding paragraph (xx) to read as follows:

**§ 300.222 Prohibitions.**

\* \* \* \* \*

(xx) Fail to comply with any of the limits, restrictions, prohibitions, or requirements specified under § 300.227.

9. Section 300.222 is further amended as follows:

- a. Remove paragraphs (x) and (z);
- b. Redesignate paragraphs (y) and (aa) as paragraphs (x) and (y), respectively;

c. Redesignate paragraphs (bb) through (ww) as (z) through (uu), respectively;  
and

d. Add paragraph (vv) and reserved paragraph (ww).

The additions reads as follows:

**§ 300.222 Prohibitions.**

\* \* \* \* \*

(vv) Fail to obtain an IMO number for a fishing vessel as required in §  
300.217(c).

(ww) [Reserved].

\* \* \* \* \*

10. In § 300.223, revise paragraph (d) and remove and reserve paragraph (e).

The revision reads as follows:

**§ 300.223 Purse seine fishing restrictions.**

\* \* \* \* \*

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

(1) Fish that are unfit for human consumption, including but not limited to fish that are spoiled, pulverized, severed, or partially consumed at the time they are brought on board, may be discarded.

(2) If at the end of a fishing trip there is insufficient well space to accommodate



all the fish captured in a given purse seine set, fish captured in that set may be discarded, provided that no additional purse seine sets are made during the fishing trip.

(3) If a serious malfunction of equipment occurs that necessitates that fish be discarded.

\* \* \* \* \*

11. Add § 300.227 to subpart O, effective October 1, 2015, to read as follows:

**§ 300.227 Framework for catch and fishing effort limits.**

(a) *General.* To implement conservation and management measures adopted by the Commission, the Pacific Islands Regional Administrator may specify limits on catch or fishing effort by fishing vessels of the United States in the Convention Area, and other fishing-related restrictions and requirements (collectively called “limits”). The limits will be specified as may be necessary to carry out the international obligations of the United States under the WCPF Convention and the Act, and will be designed to implement particular provisions of Commission-adopted conservation and management measures. For each specified limit, the Pacific Islands Regional Administrator will specify the area and period in which it applies, and as appropriate, the vessel types, gear types, species, fish sizes, and any other relevant attributes to which it applies. In addition to quantitative limits on catches and fishing effort, the Pacific Islands Regional Administrator may specify areas or periods in which particular fishing activities are restricted or prohibited, and other fishing-related requirements. For each specified quantitative limit, the Pacific Islands Regional Administrator will also specify the prohibitions and requirements that would go into effect after the limit is reached and the applicable dates of those prohibitions.

(b) *Application in territorial seas and archipelagic waters.* Unless stated otherwise in particular specifications, the limits specified under the framework shall not apply in the territorial seas or archipelagic waters of the United States or any other nation, as defined by the domestic laws and regulations of that nation and recognized by the United States.

(c) *Types of limits.* The types of limits that may be specified under this section include, but are not limited to:

(1) Limits on the weight or number of fish or other living marine resources of specific types and/or sizes that may be caught, retained, transshipped, landed, and/or sold;

(2) Limits on the amount of fishing effort that may be expended, such as the amount of time vessels spend at sea (e.g., days at sea) or engaged in fishing (e.g., fishing days), the amount of time vessels spend engaged in particular fishing activities (e.g., trolling hours), and the quantity of specific fishing activities (e.g., number of hooks set; number of longline sets or purse seine sets; number of purse seine sets made on FADs; number of FADs deployed); and

(3) Areas or periods in which particular activities are restricted or prohibited, such as periods during which it is prohibited to set purse seines on FADs or to use FADs in specific other ways.

(d) [Reserved]

(e) *Allocation of limits among sectors or vessels.* (1) The Pacific Islands Regional Administrator may allocate a Commission-adopted limit among particular sectors or groups of fishing vessels of the United States, such as for vessels that use different types of fishing gear. In other words, the Pacific Islands Regional Administrator

may specify separate limits for different sectors or groups of fishing vessels even when not required to do so under the Commission's conservation and management measures.

(2) The Pacific Islands Regional Administrator may not, under this framework, allocate a Commission-adopted limit among individual fishing vessels of the United States. In other words, the Pacific Islands Regional Administrator may not, under this framework, specify limits for individual fishing vessels of the United States, except in the case where there is only one fishing vessel in a sector or group of fishing vessels that is subject to the limit. This does not preclude NMFS from allocating Commission-adopted limits among individual fishing vessels through other regulations.

(f) *Procedures for specifying limits.* (1) For each specified limit, the Pacific Islands Regional Administrator will publish in the **Federal Register** a notice of the proposed catch or fishing effort limit specification and a request for public comment on the proposed specification, unless exempted under the Administrative Procedure Act, 5 U.S.C. 553. The specification will include the characteristics of the limit and the restrictions that will go into effect if the limit is reached.

(2) For each specified limit that is subject to prior notice and public comment, the Pacific Islands Regional Administrator will consider any public comment received on the proposed specification, and publish in the **Federal Register** a notice of the final catch or fishing effort limit specification, if appropriate.

(g) *Notification of limits being reached.* For quantitative limits, NMFS will monitor catch or fishing effort with respect to the specified limit using data submitted in vessel logbooks and other available information. When NMFS estimates or projects that the specified limit has or will be reached, the Pacific Islands Regional Administrator will

publish notification to that effect in the **Federal Register**.

(h) *Prohibitions after limit is reached.* For quantitative limits, the **Federal Register** notice published under paragraph (g) of this section will include an advisement that specific activities will be prohibited during a specific period. The notice will specify the prohibitions and their start and end dates. The start date of the prohibitions may not be earlier than 7 days after the date of filing for public inspection at the Office of the **Federal Register** the notice to be published under paragraph (g) of this section. The prohibited activities may include, but are not limited to, possessing, retaining on board, transshipping, landing, or selling specific types and/or sizes of fish or other living marine resources, and fishing with specified gear types or methods in specified areas. The Pacific Islands Regional Administrator may, based on revised estimates or projections of catch or fishing effort with respect to specified limits, rescind or modify the prohibitions specified under this section. The Pacific Islands Regional Administrator will publish notice of any such rescissions or modifications in the **Federal Register**.

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