



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

**[Docket No. 150924885-5999-01]**

**RIN 0648-BF38**

**International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for the Area of Overlap between the Convention Areas of the Inter-American Tropical Tuna Commission and the Western and Central Pacific Fisheries Commission**

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

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

**SUMMARY:** NMFS hereby proposes regulations under the Tuna Conventions Act to implement Recommendation C-12-11 of the Inter-American Tropical Tuna Commission (IATTC).

Recommendation C-12-11 revises the management regime for the area of overlapping jurisdiction between the IATTC and the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). These proposed regulations provide that the management measures of the IATTC would no longer apply in the area of overlapping jurisdiction, with the exception of regulations governing the IATTC Regional Vessel Register. This action is necessary for the United States to satisfy its obligations as a member of the IATTC.

**DATES:** Comments on the proposed rule and supporting documents must be submitted in writing by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2015-0158, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2015-0158>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rachael Wadsworth, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2015-0158” in the comments.

*Instructions:* Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the draft Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-

NMFS-2015-0158 or by contacting the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Region, 7600 Sand Point Way, NE, Bldg 1, Seattle, WA 98115-0070, or *RegionalAdministrator.WCRHMS@noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Rachael Wadsworth, NMFS, West Coast Region, 562-980-4036.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background on the IATTC**

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. The full text of the 1949 Convention is available at:

*[http://www.iattc.org/PDFFiles/IATTC\\_convention\\_1949.pdf](http://www.iattc.org/PDFFiles/IATTC_convention_1949.pdf)*.

The IATTC consists of 21 member nations and four cooperating non-member nations and facilitates scientific research into, as well as the conservation and management of, highly migratory species of fish in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the eastern Pacific Ocean (EPO) within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC has maintained a scientific research and fishery monitoring program for many years, and regularly assesses the status of tuna and billfish stocks in the EPO to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

##### **International Obligations of the United States under the Convention**

As a Contracting Party to the 1949 Convention and a member of the IATTC, the United States is legally bound to implement decisions of the IATTC. The Tuna Conventions Act (16

U.S.C. 951-962), as amended on November 5, 2015, by Title II of Public Law 114-81, provides that the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department of Homeland Security, may promulgate such regulations as may be necessary to carry out the United States international obligations under the Convention, including recommendations and decisions adopted by the IATTC. The Secretary's authority to promulgate such regulations has been delegated to NMFS.

### **Area of Overlap Recommendation**

In 2004, the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean entered into force. The Convention's area of application (WCPFC Convention Area) overlaps with the IATTC Convention Area. The two convention areas overlap in the Pacific Ocean waters within a rectangular area bounded by 50° S. latitude, 150° W. longitude, 130° W. longitude, and 4° S. latitude ("Area of Overlap").

The IATTC and WCPFC recognized the need to clarify the management measures in the Area of Overlap, and the IATTC adopted Recommendation C-12-11 (*IATTC – WCPFC Overlap Area*) at its 84th meeting in October 2012. Recommendation C-12-11 sets forth specific provisions for management of the Area of Overlap. Specifically, Recommendation C-12-11 calls for each flag State member, if it is a member of both organizations, to decide whether IATTC or WCPFC conservation and management measures will apply to vessels listed in the registers of both organizations while fishing in the Area of Overlap. In December 2012, the WCPFC adopted a nearly identical decision. The record of the WCPFC's decision can be found at paragraph 80 in the Summary Report for the Ninth Regular Session of the WCPFC, which is available at:

*<https://www.wcpfc.int/system/files/WCPFC9-Summary-Report-final.pdf>*

### **NMFS Proposal**

As stated above, the United States is a member of the IATTC. The United States is also a member of the WCPFC, and implements WCPFC decisions under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act; 16 U.S.C. 6901 *et seq.*). Currently, both the U.S. regulations that implement the decisions of the IATTC (see 50 CFR part 300, subpart C) and the regulations that implement the decisions of the WCPFC (see 50 CFR part 300, subpart O) apply in the Area of Overlap. Rather than apply one Commission's measures to an individual vessel or gear type and the other Commission's measures to another vessel or gear type, NMFS proposes to apply the WCPFC's management measures to the entire U.S. fleet. NMFS proposes this application of the regulations because each Commission develops a comprehensive and self-contained package of management measures to address similar conservation objectives. If one set of management measures were applied to some vessels and another set to others, management would fail to address the conservation objectives of either Commission.

NMFS proposes that the decisions of the WCPFC, rather than those of the IATTC, apply in the Area of Overlap because the U.S. fisheries impacted by this rulemaking occur mostly in the WCPFC Convention Area. In other words, the impacted fisheries are subject to regulations that implement the decisions of the WCPFC at 50 CFR part 300, subpart O, in most of their fishing grounds. Being subject to only this set of regulations when fishing inside the Area of Overlap—rather than being subject to only the IATTC-related regulations in that area—would provide more uniform regulations for these fisheries. Alternatively, NMFS also welcomes public input on alternatives to this rule, i.e., such as requiring U.S. vessels to adhere to some or all conservation measures of the IATTC, rather than those of the WCPFC, in the Area of Overlap. Depending on the input received, the final rule might be adjusted accordingly.

U.S. vessels do not fish in the Area of Overlap often, but the two gear types that have fished in the Area of Overlap since 2008 are troll vessels that harvest South Pacific albacore and purse seine vessels that harvest tropical tuna. The majority of the South Pacific albacore troll fishery occurs in the WCPFC Convention Area outside the Area of Overlap (i.e., west of 150° W.), and some fishing has occurred in the Area of Overlap (Table 1). These fisheries are described in the **Classification** section below.

**Table 1. Number of U.S. troll vessels (i.e., vessels) and days fished by vessels (i.e., vessel days) in the Pacific Ocean for South Pacific albacore from 2008 to 2014 (data provided by NMFS Southwest Fisheries Science Center). Data for 2013 and 2014 are considered preliminary.**

Year	East of 130° W.		Area of Overlap		West of 150°W.	
	vessels	vessel-days	vessels	vessel-days	vessels	vessel-days
2008	--	--	3	93	3	162
2009	0	0	4	17	4	180
2010	3	7	5	58	6	339
2011	0	0	3	7	6	310
2012	6	17	9	152	9	378
2013	0	0	0	0	6	325
2014	0	0	7	116	8	503

-- indicates data are for fewer than three vessels.

Although under this proposed rule, regulations implementing WCPFC decisions would continue to apply in the Area of Overlap, NMFS also proposes that regulations in 50 CFR 300.22 that pertain to the IATTC Regional Vessel Register would still apply with respect to U.S. vessels that are used to fish in the Area of Overlap. NMFS proposes that IATTC Regional Vessel Register regulations continue to apply so that the United States can continue to fulfill its obligations under the Agreement on the International Dolphin Conservation Program (AIDCP) in the Area of Overlap. The IATTC Regional Vessel Register is used as a mechanism to implement AIDCP

provisions, including vessel assessment fees, observer coverage, and authorization for the active status of purse seine vessels. Therefore, the IATTC Regional Vessel Register requirements that include the cost associated with vessel assessment fees would continue to apply in the Area of Overlap. In addition, the United States is obligated to manage U.S. purse seine well volume capacity in the IATTC Convention Area within the limits established by the IATTC, and the IATTC Regional Vessel Register is used for this purpose. Similarly, the IATTC Regional Vessel Register is used to manage the one-trip option for U.S. purse seine vessels licensed under the South Pacific Tuna Treaty for fishing trips that do not exceed 90 days in duration.

### **Proposed Regulations for Area of Overlap**

This proposed rule would implement Recommendation C-12-11 and establish that, in the Area of Overlap, the regulations that implement the decisions of the IATTC at 50 CFR part 300, subpart C, would not apply; however, regulations pertaining to the IATTC Regional Vessel Register at 50 CFR 300.22(b) would still apply. The decisions of the WCPFC as implemented by NMFS regulations at 50 CFR part 300, subpart O, would continue to apply in the Area of Overlap. Under this proposed rule, the definition of the IATTC Convention Area would be revised into two parts: (1) include the Area of Overlap in the definition of the IATTC Convention Area for the purpose of IATTC Regional Vessel Register regulations at 50 CFR 300.22(b), and (2) exclude the Area of Overlap in the definition of the Convention Area for the purpose of regulations at 50 CFR part 300, subpart C.

### **Classification**

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tuna Conventions Act and other applicable laws.

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

Additionally, although there are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act, existing collection-of-information requirements still apply under the following Control Numbers: (1) 0648-0596, Vessel Monitoring System (VMS) Requirements under the WCPFC; (2) 0648-0595, WCPFC Vessel Information Family of Forms; (3) 0648-0649, Transshipment Requirements under the WCPFC; and (4) 0648-0204, West Coast Region Family of Forms. 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.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is provided in the following paragraphs.

As described in the **SUPPLEMENTARY INFORMATION** above, the proposed regulations would implement Recommendation C-12-11 adopted by the IATTC at its October 2012 meeting. Recommendation C-12-11 calls for each flag State member, if it is a member of both organizations, to decide whether IATTC or WCPFC conservation and management measures will apply to vessels listed in the registers of both organizations while fishing in the Area of Overlap. Currently, both the U.S. regulations that implement the decisions of the IATTC (see 50 CFR part 300, subpart C) and the regulations that implement the decisions of the

WCPFC (see 50 CFR part 300, subpart O) apply in the Area of Overlap. This proposed rule would provide that the regulations that implement management measures of the IATTC would no longer apply in the Area of Overlap, with the exception of regulations governing the IATTC Regional Vessel Register.

The failure to promulgate the proposed action would continue to require the decisions of both the IATTC and WCPFC to apply in the Area of Overlap. Alternatively, the implementation of Recommendation C-12-11 would establish the application of the measures of only one organization (i.e., the WCPFC) as opposed to both organizations (i.e., the WCPFC and the IATTC).

On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467). The rule increased the size standard for Finfish Fishing from \$19.0 million to \$20.5 million, Shellfish Fishing from \$5.0 million to \$5.5 million, and Other Marine Fishing from \$7.0 million to \$7.5 million. The National Marine Fisheries Service (NMFS) conducted its analysis for this action in light of the new size standards.

NMFS considers all entities subject to this action to be small entities as defined by both the former, lower size standards and the revised size standards. The small entities that would be affected by the proposed action are all U.S. vessels that may fish for tuna or tuna-like species in the Area of Overlap; however, U.S. vessels do not fish for tuna or tuna-like species in the Area of Overlap often. Since 2008, no U.S. fishing vessel with pelagic longline gear has fished in the Area of Overlap. Two gear types that have fished in the Area of Overlap since 2008 are troll vessels that harvest South Pacific albacore and purse seine vessels that harvest tropical tunas.

There are two components to the U.S. tuna purse seine fishery in the EPO: (1) purse seine vessels with at least 363 mt fish hold volume (class size 6 vessels) that are typically based in the western and central Pacific Ocean (WCPO), and (2) coastal purse seine vessels with smaller fish hold volume that are based on the U.S. West Coast. Because the coastal purse seine vessels do not typically fish south of the equator or on the high seas, this rule would likely only affect the size class 6 purse seine vessels.

In recent years, most of the yellowfin, skipjack, and bigeye tuna catch in the EPO have been landed by size class 6 purse seine vessels. Estimates of ex-vessel revenues in this purse seine fishery in the IATTC Convention Area since 2005 are confidential and may not be publicly disclosed because of the small number of vessels in the fishery. In the Area of Overlap, no purse seine vessels fished from 2008 to 2010, fewer than three purse seine vessels fished in 2011 and 2012 (therefore, their landings and revenue are confidential), and no purse seine vessels fished in 2013 or 2014.

As of November 2015, there are 22 size class 6 purse seine vessels on the IATTC Regional Vessel Register and 40 size class 6 purse seine vessels on the WCPFC Record of Fishing Vessels. For the purse seine fishery based in the WCPO, NMFS estimates that the average annual receipts over 2010 to 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 online: <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.

U.S. vessels that fish with troll gear in the Pacific Ocean can be described as part of the North Pacific albacore troll fishery and the South Pacific albacore troll fishery. As of November 2, 2015, there are 1,394 vessels with active Pacific Highly Migratory Species permits authorized to use troll gear. An average of 640 West Coast albacore trollers participated in the fishery from 2008 to 2014, with an average ex-vessel revenue of approximately \$53,829 per vessel. The North Pacific albacore troll fishery occurs mostly in the IATTC Convention Area from April through November, while the South Pacific albacore troll fishery occurs almost exclusively in the WCPFC Convention Area from November through April.

From 2008 to 2012, and in 2014, fewer than three U.S. West Coast trollers participated in the South Pacific albacore fishery and landed on the West Coast. In 2013, four West Coast trollers participated in the South Pacific albacore fishery and landed on the West Coast, with an ex-vessel revenue of about \$275,000 per vessel. To estimate revenues, only data from vessels that landed on the West Coast were used. From 2008 to 2014, the number of U.S. trollers targeting South Pacific albacore in the Area of Overlap has ranged from three to nine vessels on an annual basis (Table 1). However, fishing activity in the Area of Overlap could change with ocean conditions such as El Niño Southern Oscillation events.

This action will not increase the economic or record keeping and reporting burden on U.S. vessel owners and operators; but rather, the rule is expected to reduce the burden because affected vessels will only be required to follow the measures of one organization (i.e., the WCPFC) rather than both organizations (i.e., the WCPFC and the IATTC) in the Area of Overlap. For example, WCPFC regulations at § 300.223(a) establish a limit of 1,828 purse seine fishing days in the WCPFC Convention Area in the areas of high seas and U.S. EEZ between 20° N. latitude and 20° S. latitude (an area known as the ELAPS), which includes some of the Area

of Overlap, for calendar year 2015. The limit was reached and a closure of the applicable area to purse seine fishing took effect June 15, 2015, and will remain in effect through December 31, 2015 (80 FR 32313). In contrast, the IATTC implementing regulations at § 300.25(f) provide that U.S. purse seine vessels select one of two options for 62-day closures in the IATTC Convention Area for 2015 and 2016. Under this proposed rule, vessel owners would not have to comply with both sets of purse seine closures in the Area of Overlap, only the WCPFC closure. In other instances, this regulation would remove duplicative regulations governing the U.S. fleet in the Area of Overlap. However, vessel owners and operators will still need to comply with the IATTC Regional Vessel Register requirements, such as vessel assessment fees and observer coverage.

In addition, this action is not expected to change the typical fishing practices of impacted vessels because the U.S. fisheries affected by this rulemaking occur mostly in the WCPFC Convention Area. In other words, the impacted fisheries are subject to regulations that implement the decisions of the WCPFC at 50 CFR part 300, subpart O, in most of their fishing grounds. Imposing only this set of regulations to vessels fishing inside the Area of Overlap would provide more uniform regulations for these fisheries.

Pursuant to the Regulatory Flexibility Act and the SBA's June 20, 2013, and June 14, 2014, final rules (78 FR 37398 and 79 FR 33647, respectively), this certification was developed for this action using the SBA's revised size standards. NMFS considers all entities subject to this action to be small entities as defined by both the former, lower size standards and the revised size standards. Because each affected vessel is a small business, this proposed action is considered to equally affect all of these small entities in the same manner. Based on the disproportionality and profitability analysis above, the proposed action, if adopted, will not have adverse or

disproportional economic impact on these small business entities. Therefore, the proposed action would not have a significant economic impact on a substantial number of small entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and was not prepared for this proposed rule.

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

Fish, Fisheries, Fishing, Fishing vessels, International organizations, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: December 17, 2015.

**Eileen Sobeck,**

*Assistant Administrator for Fisheries,*

*National Marine Fisheries Service.*

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

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

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

**Authority:** 16 U.S.C. 951 *et seq.*

2. In § 300.21, revise the definition for “Convention Area” in alphabetical order to read as follows:

**§ 300.21 Definitions.**

\* \* \* \* \*

*Convention Area or IATTC Convention Area* means:

(1) for the purpose of section 300.22(b) of this subpart, all waters of the Pacific Ocean within the area bounded by the west coast of the Americas and by 50° N. latitude from the coast of North America to its intersection with 150° W. longitude, then 150° W. longitude to its intersection with 50° S. latitude, and then 50° S. latitude to its intersection with the coast of South America; and

(2) for the purpose of all other sections and paragraphs of this subpart, all waters of the Pacific Ocean within the area bounded by the west coast of the Americas and by 50° N. latitude from the coast of North America to its intersection with 150° W. longitude, then 150° W. longitude to its intersection with 4° S. latitude, then 4° S. to its intersection with 130° W. longitude, then 130° W. longitude to its intersection with 50° S. latitude, and then 50° S. latitude to its intersection with the coast of South America.

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