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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

**[Docket No. 150924885-6324-02]**

**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:** Final rule.

**SUMMARY:** NMFS is issuing regulations under the Tuna Conventions Act to implement Recommendation C-12-11 of the Inter-American Tropical Tuna Commission (IATTC) by revising 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 regulations provide that the management measures of the IATTC no longer apply in the area of overlapping jurisdiction, with the exception of regulations governing the IATTC Regional Vessel Register. This rule is necessary for the United States to satisfy its obligations as a member of the IATTC.

**DATES:** This rule is effective *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** Copies of the Regulatory Impact Review and other supporting documents prepared for this final rule 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 December 28, 2015, NMFS published a proposed rule in the **Federal Register** (80 FR 80741) to implement IATTC Recommendation C-12-11 (*IATTC – WCPFC Overlap Area*); the IATTC adopted this Recommendation at its 84th meeting in October 2012. The convention areas for the IATTC and WCPFC 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”). Recommendation C-12-11 calls for each flag State member, if it is a member of both organizations, to decide, for a period of not less than 3 years, 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. The proposed rule contained additional background information, including information on the IATTC, the international obligations of the United States as an IATTC member, and the need for regulations. The 30-day public comment period for the proposed rule closed on January 27, 2016.

Prior to this rule, 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) applied in the Area of Overlap. This rule implements Recommendation C-12-11 and establishes that, in the Area of Overlap, the regulations that implement the decisions of the IATTC at 50 CFR part 300, subpart C, do not apply; however, regulations pertaining to the IATTC Regional Vessel Register at 50 CFR 300.22(b) 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 rule, the definition of the IATTC Convention Area is 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.

The final rule is implemented under the authority of the Tuna Conventions Act (16 U.S.C. 951 *et seq.*), as amended on November 5, 2015, by title II of Public Law 114-81. The recent amendments provide 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 U.S. 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.

NMFS notes that on January 29, 2016, after publication of the proposed rule, the United States deposited a formal notice of intent to withdraw from the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (aka the South Pacific Tuna Treaty or SPTT). The SPTT entered into force in 1988, and provides for the establishment of terms and conditions for the U.S. tuna purse seine fleet to fish

in certain areas of the Western and Central Pacific Ocean (WCPO), including waters under the jurisdiction of the Pacific Island Parties to the SPTT. A small part of the SPTT Convention Area is in the Overlap Zone; fishing vessels of the United States operating in the SPTT Convention Area are subject to 50 CFR part 300, subpart D. The SPTT will terminate 1 year from the receipt of the deposit of the formal notice of withdrawal unless the United States rescinds the notice. Due in part to uncertainty regarding fishing access pursuant to the SPTT in 2016, 15 large purse seine vessels (>362.8 metric ton well volume) that typically fish in the WCPO requested to be added to the IATTC Regional Vessel Register for fishing access in the EPO. Consequently, the combined well volume capacity of all U.S. purse seine vessels is 29,390 m<sup>3</sup>, which is close to the 31,775 m<sup>3</sup> limit for the United States.

### **Public Comments and Responses**

NMFS received one comment letter during the 30-day public comment period that closed on January 27, 2016. At the time the comment letter was received, no SPTT licenses had been issued to U.S. vessels for 2016. On February 29, 2016, the Pacific Island Parties to the SPTT and the United States finalized revised terms of access to waters under the jurisdiction of the Pacific Island parties for 2016. The comment letter included references to the situation with the SPTT, as described above, and the distribution of fishing effort of U.S. purse seine vessels between the WCPO and EPO. The concerns expressed in the comment letter were separated into three comments, which NMFS responds to below.

*Comment 1:* Recently, the fishing effort of much of the American Samoan fleet has shifted from the WCPFC to the IATTC Convention Area; therefore, the commenter opposes this proposed rule to apply WCPFC regulations to the Area of Overlap instead of IATTC regulations. Due to the lack of SPTT licenses, the U.S. purse seine fleet has been prohibited from fishing in

the SPTT Licensing Area and 15 U.S. flagged purse seiners are utilizing their historical rights to fish in the IATTC Convention Area. Because these vessels would now be following IATTC regulations, the statement made to support the proposed rule is no longer accurate: "...the U.S. fisheries impacted by this rulemaking occur mostly in the WCPFC Area."

*Response:* As described in the preamble, NMFS recognizes that this has been an unusual year for the U.S. purse seine fleet fishing under the SPTT and that there has been uncertainty in the structure and future of the SPTT. At the time the proposed rule published, no SPTT licenses had been issued to U.S. vessels for 2016, and large purse seine vessels that typically fish in the WCPO requested to be added to the IATTC Regional Vessel Register for fishing access in the EPO. However, on February 29, 2016, the Pacific Island parties and the United States finalized revised terms of access for 2016. While the future of the SPTT remains uncertain, U.S. purse seine vessels have been issued SPTT licenses for 2016 as of the date of publication of this final rule.

Due to the uncertainty in the future of the SPTT and the terms of fishing access to waters under the jurisdiction of Pacific Island parties for U.S. purse seine vessels in the future, NMFS intends to apply these regulations for 3 years, and may re-evaluate the location of fishing effort between the EPO and WCPO after that time to consider any substantial changes in the fisheries. In the event that the SPTT does terminate, owners of U.S. purse seine vessels may be able to obtain authorization from Pacific Island nations to fish in waters under their jurisdiction through alternative arrangements.

Although Comment 1 references that the fishing effort of 15 purse seine vessels recently changed from the WCPO to the EPO, NMFS evaluated the impacts of the rule by reviewing all U.S. fishing activity in the Area of Overlap, including other gear types outside of the purse seine

fleet. As described in the **Classification** section of the proposed rule, U.S. vessels do not fish in the Area of Overlap often. The two gear types that have fished in the Area of Overlap since 2008 are troll vessels that target South Pacific albacore and purse seine vessels that target 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.), while some fishing has occurred in the Area of Overlap. As described above, the well volume capacity on the IATTC Regional Vessel Register for 2016 is nearly at the U.S. limit with 15 large purse seine vessels. There are currently 27 large purse seine vessels that are authorized by NMFS to be used for fishing on the high seas in the WCPFC Convention Area that are not on the IATTC Regional Vessel Register and these vessels will not be able to fish full time in the EPO for 2016. In addition, although U.S. longline vessels have not fished in the Area of Overlap over the past 10 years, this fleet also primarily fishes in the WCPO. This rule applies to vessels of all gear types.

*Comment 2:* IATTC decisions governing the IATTC Regional Vessel Registry and Agreement on the International Dolphin Conservation Program (AIDCP) should not apply in the Area of Overlap, including vessel assessment fees, observer coverage, and authorization for the active status of purse seine vessels. NMFS is proposing that vessels fishing in the Overlap Area pay IATTC fees, follow some IATTC rules, but also abide by all WCPFC rules.

*Response:* The decisions of the AIDCP must continue to apply regardless of the way IATTC Recommendation C-12-11 is implemented through this rulemaking. As explained in the preamble of the proposed rule, the IATTC Regional Vessel Register regulations must continue to apply to U.S. vessels in the Area of Overlap so that the United States can continue to fulfill its obligations under the AIDCP in that area. The decisions of the IATTC cannot undo the decisions of the AIDCP without consensus from the AIDCP because these organizations are established

under separate treaties. 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, including the requirement to pay vessel assessment fees required under the AIDCP will continue to apply in the Area of Overlap.

*Comment 3:* This proposed rule runs counter to its stated intent to simplify regulations in a way consistent with one Commission or the other, nor is it reflective of current status of the fishery. It applies a historical rather than forward looking rationale and, therefore, fails to account for changes clearly occurring and likely to occur in future fishing patterns. U.S. vessels fishing in the EPO should follow IATTC regulations exclusively in the Area of Overlap and not those of the WCPFC.

*Response:* NMFS disagrees that this rule would not simplify the regulations to be followed in the Area of Overlap. As described in the **Classification** section of the proposed rule, the rule is expected to simplify regulations because, aside from the IATTC Regional Vessel Register requirements, 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, in 2015 purse seine vessel owners and operators needed to comply with closures applicable in the Area of Overlap for both the IATTC and WCPFC. The IATTC implementing regulations at § 300.25(f) require vessel owners and operators to select one of two options for 62-day closures in the IATTC Convention Area. In addition, purse seine vessel owners and operators needed to comply with WCPFC regulations at § 300.223(a) that established 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. The limit was reached and the applicable area was closed to purse seine fishing from June 15, 2015, through December 31, 2015 (80 FR 32313). Under this rule, vessel owners and operators would not need to comply with both sets of purse seine closures in the Area of Overlap, and would only need to comply with the WCPFC limit on fishing days in the ELAPS.

Comment 3 also states that the rule "...applies a historical rather than forward looking rationale and therefore fails to account for changes clearly occurring and likely to occur in future fishing patterns...." As described in the response to Comment 1, NMFS cannot speculate on the outcome of the SPTT negotiations or future fishing grounds of the purse seine fleet, and can only evaluate the information that is currently available. Furthermore, NMFS cannot predict other changes that may occur in future fishing patterns outside of the SPTT. For example, changes in regional fisheries management organization measures in the future could lead to more or less restrictive measures for fleets that would require more or less burden in the Area of Overlap. Given that the majority of the U.S. fleet that has utilized the Area of Overlap in the past eight years has fished predominantly in the WCPO, NMFS still considers the decisions of the WCPFC to be the more uniform set of regulations for the U.S. fleet to follow when in the Area of Overlap. Moreover, NMFS may re-evaluate the location of fishing effort between the EPO and WCPO three years from now to consider revising this rule in light of any substantial changes in the fisheries.

### **Changes From the Proposed Rule**

There are no changes in the regulatory text between the proposed and final rule.

### **Classification**

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

This 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.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the certification. Therefore, the certification published with the proposed rule that states this rule is not expected to have a significant economic impact on a substantial number of small entities is still valid. As a result, a regulatory flexibility analysis was not required and none was prepared.

## List of Subjects in 50 CFR Part 300

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

Dated: April 21, 2016

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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, 50 CFR part 300 is 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” to read as follows:

#### **§ 300.21 Definitions.**

\* \* \* \* \*

*Convention Area* or *IATTC Convention Area* means:

(1) For the purpose of § 300.22(b), 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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