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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

[Docket No. 160204078-6078-01]

RIN 0648-BF71

International Fisheries; Eastern Pacific Fisheries for Highly Migratory Species; Amend Regulations Implementing Inter-American Tropical Tuna Commission Resolution C-02-03

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

ACTION: Final rule.

SUMMARY: This final rule amends regulations to allow U.S. vessels authorized to fish under an alternative international fisheries management regime (e.g., the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention), to fish in the Eastern Pacific Ocean (EPO) under the single-trip exception to the general rule that a vessel must be on the vessel register of the Inter-American Tropical Tuna Commission (IATTC) to fish for tuna in the Eastern Tropical Pacific Ocean (EPO). This rule is intended to conform U.S. implementing regulations to the IATTC resolution that they implement and remove an unnecessary restriction on the ability of U.S. vessels to use this exception.

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

ADDRESSES: You may view this document, identified by NOAA-NMFS-2016-0036, e-Rulemaking Portal at www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0036.

FOR FURTHER INFORMATION CONTACT: Chris Fanning, NMFS, West Coast Region, 562-980-4198.

SUPPLEMENTARY INFORMATION:

NMFS is issuing a final rule under the authority of the Tuna Conventions Act of 1950, as amended (TCA). 16 U.S.C. 951 *et seq.* As a party to the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica and a member of the IATTC, the United States is obligated to implement the decisions of the IATTC, including resolutions governing the conservation of tuna and tuna-like species in the Convention Area. The Convention Area includes the waters bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian. NMFS implements binding resolutions of the IATTC under authority of the TCA. The regulations at 50 CFR 300.22(b)(1) implement Resolution C-02-03 (*Resolution on the Capacity of the Tuna Fleet Operating in the Eastern Pacific Ocean (Revised)*) adopted by the IATTC in June 2002. This rule makes a minor, technical revision to those regulations to be more consistent with the resolution and facilitate fishing by U.S. vessels in the EPO.

Paragraph 12 of Resolution C-02-03 provides opportunities for up to 32 U.S. vessels authorized to fish in other areas of the Pacific Ocean under an alternative international fisheries management regime to fish a single trip per year in the EPO even if the vessels are not listed on the IATTC's Vessel Register. Vessels shall be authorized to fish in the EPO provided that the fishing activity of any such vessels in the EPO is limited to a single trip not to exceed 90 days in one calendar year, the vessels do not possess a Dolphin Mortality Limit pursuant to the Agreement on the International Dolphin Conservation Program, and the vessels carry an approved observer. The current regulations implementing Resolution C-02-03, issued on April

12, 2005 (70 FR 19004), explicitly reference South Pacific Tuna Treaty (SPTT) licenses as the only licenses that qualify vessels for the single-trip exception. At the time of the 2005 final rule, the SPTT was the predominant “alternative international fisheries management regime” that provided for the authorization of fishing by U.S. purse seine vessels in the western Pacific Ocean. The WCPF Convention entered into force for the United States in 2007.

Under regulations implementing the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC), vessels used to commercially fish highly migratory species on the high seas in the WCPF Convention Area must be permitted to do so by NMFS (see 50 CFR 300.212). Because of the large overlap between the WCPFC Convention Area and the SPTT Area, vessels that fish under the SPTT also are typically permitted by NMFS under 50 CFR 300.212 to fish on the high seas in the WCPF Convention Area. These vessels are subject to regulations implementing conservation and management measures adopted by the WCPFC, the organization that carries out the management regime established under the WCPF Convention.

SPTT licenses were not issued for the period starting January 1, 2016, through early March 2016, and it is unclear if they will be issued beyond 2016. Because of the wording of the implementing regulations, U.S. vessels could not use the single-trip EPO exception during the period of non-issuance of SPTT licenses. This final rule amends 50 CFR 300.22(b)(1) to allow U.S. vessels authorized to fish in areas of the Pacific Ocean other than the EPO under another alternative international fisheries management regime (e.g., the WCPFC) to fish under the single-vessel exception.

This rule also revises 50 CFR 216.24(b)(6)(iii)(C) to: remove and replace the reference to “South Pacific Tuna Treaty” to conform to § 300.22(b) described above, and correct two

cross-references to § 300.22(b). Also in that paragraph, the reference to the Southwest Regional Administrator, NMFS, is changed to “Administrator, West Coast Region” to reflect the merger of the former Southwest Region into a new West Coast Region and assumption of the responsibilities of the former Southwest Regional Administrator by the new West Coast Regional Administrator.

Classification

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

Administrative Procedure Act

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment on this action. Replacing “South Pacific Tuna Treaty” in the regulations with the exact wording from IATTC Resolution C-02-03 “alternative international tuna purse seine fisheries management regime” is a minor, technical correction that reflects the original intention of the regulation. The same vessels operating in the Western Pacific that were intended to be able to use the single-trip exception under the original wording would have access to the exception under the revised wording, and no vessels are added or removed from eligibility. Furthermore, because the purse seine fishery for tuna is active now in the Eastern Pacific, the existing reference to “South Pacific Tuna Treaty” in the absence of the issuance of SPTT licenses is an impediment to lawful fishing by U.S. vessels under Resolution C-02-03. Therefore, providing prior notice and opportunity for public comment on this action would be unnecessary and contrary to the public interest. For the same reasons, under 5 U.S.C. 553(d)(3) NMFS finds good cause to waive the requirement to delay for 30 days the effectiveness of this rule.

Executive Order 12866

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

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects

50 CFR Part 216

Administrative practice and procedure, Exports, Fish, Imports, Indians, Labeling, Marine mammals.

50 CFR Part 300

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

Dated: May 31, 2016.

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

For the reasons set out in the preamble, 50 CFR parts 216 and 300 are amended as

follows:

**PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF
MARINE MAMMALS**

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.24, revise paragraph (b)(6)(iii)(C) to read as follows:

**§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna
purse seine vessels in the eastern tropical Pacific Ocean.**

* * * * *

(b) * * *

(6) * * *

(iii) * * *

(C) The owner or managing owner of a purse seine vessel that is permitted and authorized under an alternative international tuna purse seine fisheries management regime in the Pacific Ocean must submit the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, West Coast Region, prior to obtaining an observer and entering the ETP to fish. Consistent with § 300.22(b)(1) of this title, this class of purse seine vessels is not required to be listed on the Vessel Register under § 300.22(b)(4) of this title in order to purse seine for tuna in the ETP during a single fishing trip per calendar year of 90 days or less. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4)(i) of this title.

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PART 300—INTERNATIONAL FISHERIES REGULATIONS

3. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

4. In § 300.22, revise paragraph (b)(1) to read as follows:

§ 300.22 Eastern Pacific fisheries recordkeeping and written reports.

* * * * *

(b) * * *

(1) *Exception.* Once per year, a vessel that is permitted and authorized under an alternative international tuna purse seine fisheries management regime in the Pacific Ocean may exercise an option to fish with purse seine gear to target tuna in the Convention Area without being listed on the Vessel Register and without being categorized as active under paragraph (b)(4)(i) of this section, for a fishing trip that does not exceed 90 days in duration. No more than 32 of such trips are allowed each calendar year. After the commencement of the 32nd such trip, the Regional Administrator shall announce, in the Federal Register and by other appropriate means, that no more such trips are allowed for the remainder of the calendar year. Under § 216.24(b)(6)(iii)(C) of this title, vessel assessment fees must be paid for vessels exercising this option.

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