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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 151023986-6763-02]

RIN 0648-XE284

**Pacific Island Pelagic Fisheries; 2016 U.S. Territorial
Longline Bigeye Tuna Catch Limits**

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

ACTION: Final specifications.

SUMMARY: In this final rule, NMFS specifies a 2016 limit of 2,000 mt of longline-caught bigeye tuna for each U.S. participating territory (American Samoa, Guam, and the Northern Mariana Islands). NMFS will allow each territory to allocate up to 1,000 mt each year to U.S. longline fishing vessels in a valid specified fishing agreement. As an accountability measure, NMFS will monitor, attribute, and restrict (if necessary), catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement. These catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands and fisheries development in the U.S. territories.

DATES: The final specifications are effective September 9, 2016, through December 31, 2016. The deadline to submit a specified fishing agreement pursuant to 50 CFR 665.819(b) (3) for review is October 11, 2016.

ADDRESSES: Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (Pelagic FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or www.wpcouncil.org.

NMFS prepared environmental analyses that describe the potential impacts on the human environment that would result from the action. Copies of the environmental analyses, which include a 2015 environmental assessment (EA), a 2016 supplemental EA (2016 SEA), and a finding of no significant impact, identified by NOAA-NMFS-2015-0140, are available from

www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0140, or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiiau, NMFS PIRO Sustainable Fisheries, 808-725-5176.

SUPPLEMENTARY INFORMATION: NMFS is specifying a catch limit of 2,000 mt of longline-caught bigeye tuna for each U.S. participating territory in 2016. NMFS is also authorizing each U.S. Pacific territory to allocate up to 1,000 mt of its 2,000-mt bigeye tuna limit to U.S. longline fishing vessels permitted to fish under the Pelagic FEP. NMFS will monitor catches of longline-caught bigeye tuna by the longline fisheries of each U.S. Pacific territory, including catches made by U.S. longline vessels operating under specified fishing agreements. The criteria that a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, will follow the procedures in 50 CFR 665.819 – Territorial catch and fishing effort limits. When NMFS projects that a territorial catch or allocation limit will be reached, NMFS will, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (territorial catch limit), and/or vessels in a specified fishing agreement (allocation limit).

You may find additional background information on this action in the preamble to the proposed specifications published on July 7, 2016 (81 FR 44249).

Comments and Responses

On July 7, 2016, NMFS published the proposed specifications and request for public comments (81 FR 44249); the comment period closed on July 22, 2016. NMFS received five comments on the proposed specifications and on a draft of the SEA dated June 22, 2016, with comments submitted by individuals, the fishing industry, and non-governmental organizations. NMFS considered public comments in finalizing the 2016 SEA and in making its decision on this action. NMFS responds below to comments on the proposed specifications and the July 22, 2016, draft of the SEA.

Comments on the Proposed Specifications

NMFS responds to comments on the proposed specifications, as follows:

Comment 1: Several commenters expressed general support for the action and the thorough and objective assessment of the potential impacts of the action.

Response: NMFS acknowledges the comments.

Comment 2: One commenter noted the action supports opportunities that promote U.S. fishermen supplying seafood markets, and is consistent with Federal regulations implementing Amendment 7 to the Pelagic FEP and the recent decision of the United States District Court of Hawaii

(Conservation Council for Hawaii v. NMFS, NO. CV 14-00528 LEK-RLP, 2015 WL 9459899 (D. Haw. 2015)).

Response: NMFS agrees. In November of 2014, Plaintiffs Conservation Council of Hawaii, Turtle Island Restoration Network, and Center for Biological Diversity, filed a civil action in the U.S. District Court of Hawaii (CA 14-00528) seeking declaratory and injunctive relief to set aside NOAA's October 28, 2014, final rule implementing Amendment 7, and the 2014 bigeye tuna catch and allocation limit specifications (79 FR 64097, October 28, 2014). The final rule established the framework process (50 CFR 665.819) under which the Council may recommend, and NOAA may approve, longline limits for each U.S. Pacific territory. The rule also allows each territory to allocate a portion of the limit to qualifying pelagic permit-holders through specified fishing agreements, consistent with the conservation needs of the stock and applicable Western and Central Pacific Fisheries Commission (WCPFC) decisions. In December 2015, the U.S. District Court of Hawaii upheld the final rule implementing Amendment 7, finding that the final rule was consistent with WCPFC conservation and management decisions, and was not contrary to law.

Consistent with Amendment 7, NMFS will establish a limit of 2,000 mt of bigeye tuna for each U.S. Pacific

territory for calendar year 2016. NMFS will also allow each territory to allocate through specified fishing agreements up to 1,000 mt of its 2,000-mt bigeye tuna limit to U.S. fishing vessels permitted under the Pelagic FEP. As documented in the 2015 EA and the 2016 SEA, NMFS is satisfied that this action would not impede WCPFC conservation and management objectives to eliminate overfishing on bigeye tuna. We also anticipate that this action may provide some stability to bigeye tuna markets, some positive economic benefits for the fishery and associated businesses, and net benefits to the Nation.

Comment 3: One commenter expressed concern that the proposed action could be detrimental to the Hawaiian bigeye tuna population because the amount of bigeye tuna removed from Hawaiian waters could potentially increase by 3,000 mt.

Response: Based on the best scientific information available described in Section 3.3.1 of the 2015 EA, NMFS disagrees that this action will result in localized or regional depletion of tuna stocks. Hawaii does not have a distinct bigeye tuna population. Bigeye tuna is a highly migratory species and considered by stock assessment scientists as a single Pacific-wide population. However, the stock is assessed as two separate stocks for

international management purposes, with a western and central Pacific Ocean (WCPO) stock managed by the WCPFC and an eastern Pacific Ocean (EPO) stock managed by the Inter-American Tropical Tuna Commission (IATTC).

As described in the 2015 EA, the most recent 2014 WCPO bigeye assessment utilizes a spatially disaggregated MULTIFAN-CL model that separates the WCPO into nine regions. The Hawaiian Archipelago is located mostly in Region 2, with a small portion within Region 4. Regions 2 and 4 share longitudinal boundaries of 170°E and 150°W, but are latitudinal separated at 20°N. The 2014 WCPO bigeye stock assessment showed that the regions with the highest impact to bigeye tuna in the WCPO were Regions 3 and 4 - representing 88 percent of bigeye tuna fishing mortality. Regions 3 and 4 comprise the tropical Equatorial zone between 20°N and 10°S, within which the area between 10°N and 10°S is distinguished as the core Equatorial zone for the tropical tuna longline and purse seine fisheries. The highest levels of purse seine and longline fishing mortality on bigeye tuna occur in this core Equatorial zone.

The majority of fishing effort by the U.S. longline fishery operating out of Hawaii occurs north of 20°N in Region 2, where fishing mortality for bigeye is much lower

than in Regions 3 and 4. Moreover, 98 percent of bigeye tuna caught by this fishery occurs north of 10°N, which is an area outside of the core Equatorial zone. Region 2 also has the highest ratio of exploited spawning biomass to unexploited spawning biomass, meaning that it has the lowest level of depletion because of fishing pressure.

Fishing by Hawaii longline vessels occurs principally in Regions 2 and 4, and the stochastic projections shown in Section 4 of the 2015 EA indicate that, compared to no action, the impact of transferring up to 3,000 mt of bigeye tuna from a U.S. territory to Hawaii longline vessels would result in a 2.5 percent change to the ratio of bigeye fishing mortality (F) to fishing mortality at MSY (F_{MSY}). Specifically, the analysis in the 2015 EA predicts an end to overfishing of bigeye by 2032 ($F_{2032}/F_{MSY} = 0.93$) for the alternative under which NMFS would not allow any U.S. territory to allocate any tuna to Hawaii longline vessels. Assuming the maximum utilization of territorial bigeye tuna limits and associated allocation limits under this action, F_{2032}/F_{MSY} increases slightly to 1.007. This mortality rate is associated with a 55 percent probability of overfishing and is virtually indistinguishable from the overfishing threshold of $F/F_{MSY} > 1.0$. Under this action, median total biomass (B) would be $B_{2032}/B_{MSY} = 1.510$ indicating that

biomass would be above the level of biomass that produces MSY, and is associated with a zero percent probability of overfishing. Taken together, the analysis indicates that the full utilization of territorial limits, including the transfer of up to 3,000 mt of bigeye tuna under specified fishing arrangements, would have a negligible effect on the overall stock status of bigeye tuna, and would not impede WCPFC conservation measures to eliminate bigeye overfishing in the WCPO.

Comments on the Draft Supplemental Environmental Assessment

NMFS responds to comments on the draft SEA dated June 22, 2016, as follows:

Comment 1: Two commenters questioned whether the best scientific information available supports Senator Schatz's proposal to expand the Papahānaumokuākea Marine National Monument (PMNM). The commenters questioned whether the proposed expansion would positively benefit target and non-target fish stocks, promote productive fisheries outside the PMNM, and combat climate change. The commenters noted that the PMNM expansion is a foreseeable future action that is reasonably expected to occur, and requested that NMFS evaluate the potential direct and cumulative effects of the proposed expansion on Hawaii pelagic fisheries, and living marine resources, including coral reefs, bigeye tuna, other

highly migratory fish stocks, sea turtles, sea birds, and marine mammals.

Response: On August 26, 2016, shortly before publication of this final specification, President Barack Obama issued Presidential Proclamation 9478 (August 26, 2016, 81 FR 60225), expanding the PMNM to the full extent of the U.S. Exclusive Economic Zone around the Northwestern Hawaiian Islands west of 163°W. The Proclamation establishes the PMNM Expansion for the protection of the objects within its boundaries.

That Presidential action is separate from and is not a part of the current action, which specifies a 2016 catch limit for longline-caught bigeye tuna for participating territories and allows each territory to allocate a portion of that annual catch to U.S. longline fishing vessels. The National Environmental Policy Act requires Federal agencies to consider an action's cumulative effects, together with past, present, and reasonably foreseeable Federal, state, and private actions. The commenters do not specify what impacts the Proclamation might have that they believe should be considered in a cumulative effects analysis for the 2016 bigeye tuna final specifications.

The specification of territorial longline bigeye tuna catch and allocation limits is an action of limited

duration that will conclude at the end of 2016. The Proclamation has just occurred, and thus there is no evident useful information about the protections it affords that is available to inform a cumulative effects analysis. Further, in light of the short-term nature of the current action, the prohibition on commercial fishing in the recent Proclamation is not likely to have a cumulative effect on the availability or quantity of tuna that provides the basis for the 2016 specifications. NMFS has added a new section to this effect in the 2016 SEA (Section 2.5.4, Papahānaumokuākea Marine National Monument Expansion).

Comment 2: One commenter questioned the scientific basis for expanding the PMNM, and noted that if the proposal has been peer reviewed, NMFS should also be evaluating the effects of the Rose Atoll, Mariana Trench, and Pacific Remote Islands Marine National Monuments on tuna stocks and other highly migratory species.

Response: Like the recent Proclamation expanding the PMNM, the Presidential Proclamations designating the Rose Atoll (74 FR 1577, January 12, 2009), Mariana Trench (74 FR 1557, January 12, 2009), and Pacific Remote Islands Monuments (74 FR 1565, January 12, 2009; 79 FR 58645, September 29, 2009), and implementing regulations (78 FR 32996, June 2, 2013) are prior Federal actions, and are not

part of this action. Therefore, as explained in Section 3.0 (Cumulative Impacts) of the 2016 SEA, there is no new information on any other component of the environment that would affect the cumulative effects analysis contained in the 2015 EA.

Classification

The Regional Administrator, NMFS PIR, determined that this action is necessary for the conservation and management of Pacific Island fishery resources, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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. NMFS published the factual basis for the certification in the proposed rule, and we do not repeat it here. NMFS received no comments on this certification; as a result, a regulatory flexibility analysis is not required, and none has been prepared.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily

engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016.

Pursuant to the RFA and prior to July 1, 2016, NMFS developed a certification for this regulatory action using SBA size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial fishing businesses and were considered small under the SBA size standards and, thus, they all would continue to be considered small under the new standard. Accordingly, NMFS has determined that the new size standard does not affect analyses prepared for this regulatory action.

This rule is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1) because it is a substantive

rule that relieves a restriction. This rule allows all U.S. vessels identified in a valid specified fishing agreement to resume fishing in the WCPO after NMFS closed the longline fishery for bigeye tuna both there and in the EPO.

NMFS closed the U.S. pelagic longline fishery for bigeye tuna in the WCPO, on July 22, 2016, because the fishery reached the 2016 catch limit (81 FR 45982, July 15, 2016). On July 25, 2016, NMFS also closed the U.S. pelagic longline fishery for bigeye tuna for vessels greater than 24 m in the EPO because the fishery reached the 2016 catch limit (81 FR 46614, July 18, 2016). This final rule would relieve the restriction of the fishery closure in the WCPO by allowing all U.S. vessels to fish for bigeye tuna in the WCPO under a valid specified fishing agreement with one or more U.S. Pacific territory. This would alleviate some of the impacts to the U.S. pelagic longline fishery resulting from the two fishery closures, and may provide positive economic benefits for the fishery and associated businesses, and net benefits to the public and the Nation.

This action is exempt from review under E.O. 12866 because it contains no implementing regulations.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 8, 2016

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Programs,
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