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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 161031999-7017-01]

RIN 0648-BG41

**International Fisheries; Pacific Tuna Fisheries; 2017 and 2018 Commercial Fishing
Restrictions for Pacific Bluefin Tuna in the Eastern Pacific Ocean**

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

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) is proposing regulations under the Tuna Conventions Act to implement Resolution C-16-08 (*Measures for the Conservation and Management of Bluefin Tuna in the Eastern Pacific Ocean*). This Inter-American Tropical Tuna Commission (IATTC) Resolution establishes annual and trip catch limits on commercial catch of Pacific bluefin tuna (*Thunnus orientalis*) in waters of the eastern Pacific Ocean (EPO) for 2017 and 2018. 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-2016-0141, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0141, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Celia Barroso, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2016-0141” 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 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 (RIR) and other supporting documents are available via the Federal eRulemaking Portal: www.regulations.gov, docket NOAA-NMFS-2016-0141, or contact with the Regional Administrator, Barry A. Thom, NMFS West Coast Region, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232-1274, or RegionalAdministrator.WCRHMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Celia Barroso, NMFS, 562-432-1850, Celia.Barroso@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established in 1949 and operates under 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 (Antigua Convention). See: www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.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, tuna and tuna-like species in the IATTC Convention Area (Convention Area). The Convention Area is defined as waters of the 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 maintains a scientific research and fishery monitoring program, and regularly assesses the status of tuna, sharks, 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 Party to the Antigua 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 et seq.) directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

Pacific Bluefin Tuna Stock Status

In 2011, NMFS determined overfishing was occurring on Pacific bluefin tuna (76 FR 28422, May 17, 2011), which is considered a single Pacific-wide stock. Based on the results of a 2012 stock assessment conducted by the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC), NMFS determined Pacific bluefin tuna was not only subject to overfishing, but was also overfished (78 FR 41033, July 9, 2013). Subsequently, based on the results of the 2014 ISC stock assessment, NMFS determined that Pacific bluefin tuna continued to be overfished and subject to overfishing (80 FR 12621, March 10, 2015).

Pacific Bluefin Tuna Resolution

Recognizing the need to reduce fishing mortality of Pacific bluefin tuna, the IATTC has adopted catch limits in the Convention Area since 2012 (see the final rule implementing Resolution C-14-06 for more information on previous management measures (80 FR 38986, July 8, 2015)). At its resumed 90th Meeting in October 2016, the IATTC adopted Resolution C-16-08. The resolution and subject of this rulemaking was approved by the Secretary of State, thereby prompting implementation by NMFS. Resolution C-16-08 reaffirms that, "...the IATTC scientific staff recommend[ed] extending the measures established in the current resolution [Resolution C-14-06] for two more years."

In 2015, the Western and Central Pacific Fisheries Commission (WCPFC), which has purview over the management of highly migratory fish stocks in the western and central Pacific Ocean, revised a 2014 conservation and management measure for Pacific bluefin tuna intended to decrease the level of fishing mortality (CMM 2015-04). Additionally, the IATTC and the WCPFC have agreed to hold annual joint working group meetings intended to develop a Pacific-wide approach to the management of Pacific bluefin tuna. The first meeting took place August 29 through September 2, 2016, and the second meeting is scheduled for late August 2017. Future

conservation measures adopted by the IATTC and WCPFC for Pacific bluefin tuna are also expected to be based, in part, on information and advice from the ISC, which recently completed a stock assessment in 2016 and intends to provide an update in 2018.

Similar to Resolution C-14-06 (applicable 2015 to 2016), the main objective of Resolution C-16-08 is to reduce overfishing and to conserve and rebuild the stock by setting limits on the commercial catch of Pacific bluefin tuna in the IATTC Convention Area during 2017 and 2018. C-16-08 establishes a combined catch limit of 600 metric tons (mt) for 2017 and 2018 applicable to commercial vessels of each member or cooperating non-member, except Mexico, with a historical record of Pacific bluefin tuna catch from the EPO (such as the United States). Total catch is not to exceed 425 mt in a single year.

Council Recommendations for the Implementation of C-16-08

In accordance with a November 2014 Pacific Fishery Management Council (Council) recommendation, NMFS established trip limits when implementing Resolution C-14-06. At its November 2016 meeting, the Council again recommended that the same two trip limits be established: (1) an initial 25 mt trip limit from the start of the year until catch is within 50 mt of the catch limit and (2) a 2 mt trip limit through the end of the year (or until fishing is closed) when the catch for the year is within 50 mt of the catch limit.

Pacific Bluefin Tuna Catch History

While Pacific bluefin tuna catch by U.S. commercial vessels fishing in the Convention Area exceeded 1,000 mt per year in the early 1990s, annual catches have remained below 500 mt for more than a decade. The U.S. commercial catch of Pacific bluefin tuna in the Convention Area for the years 2002 to 2016 can be found in Table 1 below. The average annual Pacific bluefin tuna catch landed by U.S. commercial vessels fishing in the Convention Area from 2011

to 2015 represents only one percent of the average annual landings for all fleets fishing in the Convention Area during that period. For information on Pacific bluefin tuna harvests in the Convention Area through 2015, see http://isc.fra.go.jp/fisheries_statistics/index.html; for preliminary information on Pacific bluefin tuna harvest in the Convention Area in 2016, see www.iattc.org/CatchReportsDataENG.htm.

Table 1: Annual U.S. Commercial Catch, in Metric Tons (mt), of Pacific Bluefin Tuna in the Eastern Pacific Ocean from 2002 to 2016.

Year	Catch (mt)
2002	62
2003	40
2004	11
2005	208
2006	2
2007	44
2008	1
2009	416
2010	1
2011	118
2012	42
2013	11
2014	408
2015	96
2016	*343

Source: Highly Migratory Species Stock Assessment and Fishery Evaluation: www.pcouncil.org/highly-migratory-species/stock-assessment-and-fishery-evaluation-safe-documents/current-hms-safe-document/
 *Preliminary estimate of 2016 Pacific bluefin tuna landed catch by United States based on communications with California Department of Fish and Wildlife on December 9, 2016.

Proposed Regulations for Pacific Bluefin Tuna for 2017-2018

This proposed rule would establish catch limits for U.S. commercial vessels that catch Pacific bluefin tuna in the Convention Area for 2017 and 2018. In 2017, the catch limit for the entire U.S. fleet is 425 mt. In 2018, NMFS will announce the catch limit in a **Federal Register** notice, which will be calculated to correspond with the limits established in Resolution C-16-08

(i.e., not to exceed 425 mt in a year). The 2018 catch limit will be calculated as the remainder from 2017 (i.e., how much of 425 mt was not caught) added to 175 mt, except as follows: 1) if 175 mt or less is caught in 2017, then the 2018 catch limit is 425 mt; or 2) if greater than 425 mt is caught in 2017, then the catch limit in 2018 will be further reduced by the amount in excess of 425 mt (i.e., the remainder of the 600 mt limit for 2017-2018).

In each year, a 25 mt trip limit would be in effect until catch is within 50 mt of the annual limit, at which time NMFS would impose a 2 mt trip limit through the end of the year or until fishing is closed. NMFS will publish a notice in the **Federal Register** when the 2 mt trip limit is imposed.

When NMFS determines that the catch limit is expected to be reached in 2017 or 2018 (based on landings receipts, data submitted in logbooks, and other available fishery information), NMFS will prohibit commercial fishing for, or retention of, Pacific bluefin tuna for the remainder of the calendar year. NMFS will also publish a notice in the **Federal Register** announcing that the targeting, retaining, transshipping or landing of Pacific bluefin tuna will be prohibited on a specified effective date through the end of that calendar year. Upon that effective date, a commercial fishing vessel of the United States may not be used to target, retain on board, transship, or land Pacific bluefin tuna captured in the Convention Area during the period specified in the announcement. However, any Pacific bluefin tuna already on board a fishing vessel on the effective date may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the effective date. NMFS is also proposing to revise a paragraph in the prohibitions section solely to update its reference to another paragraph—the proposed revised Pacific bluefin tuna regulations.

Proposed Catch Monitoring

NMFS would provide updates on Pacific bluefin tuna catches in the Convention Area to the public via the IATTC listserv and the NMFS West Coast Region website: [/www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/bluefin_tuna_harvest_status.html](http://www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/bluefin_tuna_harvest_status.html). NMFS would also report preliminary estimates of Pacific bluefin tuna catch between monthly intervals if and when total catch approaches the limits to help participants in the U.S. commercial fishery plan for the possibility of the catch limit being reached.

Endangered Species Act Petition

In June 2016, NMFS received a petition to list Pacific bluefin tuna as endangered or threatened under the Endangered Species Act, 16 U.S.C. 1531 *et seq.* NMFS subsequently found that the petition may be warranted and has initiated a status review (81 FR 70074, October 11, 2016). The petition under the Endangered Species Act regarding a scientific determination about the status of Pacific bluefin tuna is distinct from this proposed rulemaking to restrict commercial fisheries under the Tuna Conventions Act.

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 associated with the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) still apply. These requirements have been

approved by the Office of Management and Budget under Control Number 0648-0204.

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 (RFA), 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 (SBA) 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.

The U.S. Small Business Administration (SBA) defines a “small business” (or “small entity”) as one with annual revenue that meets or is below an established size standard. 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). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.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. *Id.* at 81194.

U.S. commercial catch of Pacific bluefin tuna from the Convention Area is primarily made in waters off of California by the coastal pelagic small purse seine fleet, which targets Pacific bluefin tuna opportunistically, and other fleets (e.g., California large-mesh drift gillnet,

surface hook-and-line, west coast longline, and Hawaii's pelagic fisheries), which catch Pacific bluefin tuna incidentally. The small entities the proposed action would directly affect are all U.S. commercial fishing vessels that may target (e.g., coastal pelagic purse seine vessels) or incidentally catch (e.g., drift gillnet) Pacific bluefin tuna in the Convention Area; however, not all vessels that have participated in this fishery decide to do so every year. Implementation of the annual catch limits for 2017 and 2018 in this proposed action is not expected to result in changes in current fishery operations as the annualized catch limit is above recent annual average catch by all fleets (average annual catch from 2006 to 2015 was 114 mt). Additionally, from 2006 to 2015, incidental landings of Pacific bluefin tuna have not exceeded 2 mt per trip.

Revenues of coastal purse seine vessels are not expected to be significantly altered as a result of this proposed rule. Since 2006, the average annual revenue per vessel from all finfish fishing activities for the U.S. purse seine fleet that have landed Pacific bluefin tuna has been less than \$11 million, whether considering an individual vessel or per vessel average. Since 2006, in years Pacific bluefin tuna was landed, purse seine vessels that caught Pacific bluefin tuna had an average annual income of about \$1.7 million per vessel (based on all species landed). Annually, from 2011 to 2015, the number of small coastal pelagic purse seine vessels that landed Pacific bluefin tuna in the Convention Area ranged from zero to five. In 2011 and 2012, fewer than three vessels targeted Pacific bluefin tuna; therefore, their landings and revenue are confidential. In 2013, the coastal purse seine fishery did not land Pacific bluefin tuna. In 2014 and 2015, four and five vessels landed Pacific bluefin tuna, respectively. In 2014, eight purse seine vessels fishing in the Convention Area landed HMS in California, but only four of them were involved in landing roughly 401 mt of Pacific bluefin tuna, worth about \$588,000, in west coast ports. Similarly, in

2015, 11 vessels fishing in the Convention Area landed HMS in California, but only 5 vessels landed approximately 86 mt of Pacific bluefin tuna, worth about \$75,000.

The revenue derived from Pacific bluefin tuna is a fraction of the overall revenue for coastal pelagic purse seine vessels (3.9 percent annually from 2006-2015) as they typically harvest other species, including Pacific sardine, Pacific mackerel, squid, and anchovy. The value of Pacific bluefin tuna in coastal pelagic purse seine fishery from 2006-2015 is \$1.31/kilogram. This amount is negligible relative to the fleet's annual revenue resulting from other species. Prior to 2015, the Pacific bluefin tuna fishery was not subject to trip limits. From 2006 through 2014, 62.5 percent of trips by coastal purse seine vessels targeting Pacific bluefin tuna landed greater than 25 mt of Pacific bluefin tuna. However, landings did not exceed 25 mt in 2015 after the trip limits became effective on July 9, 2015. Future regulatory discards, if any, will be negligible both in volume and value because a vessel is likely to end fishing for Pacific bluefin tuna when the 25 mt trip limit is met.

Since 2006, the average annual revenue per vessel from all finfish fishing activities for the U.S. fleet with incidental landings of Pacific bluefin tuna has been less than \$11 million. These vessels include drift gillnet, surface hook-and-line, and longline gear-types. As stated earlier, the revenues of these vessels are also not expected to be significantly altered by the rule. From 2011 to 2015, the number of drift gillnet, surface hook-and-line, and longline vessels that participated in this fishery range from 11 to 12, 1 to 50, and 1 to 8, respectively. During these years, vessels with incidental landings landed an annual average of 6.3 mt of Pacific bluefin tuna, worth approximately \$32,600, without exceeding 2 mt per trip. As a result, it is anticipated that the annual and trip limits will not impact vessels landing incidentally-caught Pacific bluefin tuna.

Pursuant to the RFA and NMFS' December 29, 2015, final rule (80 FR 81194), this certification was developed for this action using NMFS' 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, there are no disproportional affects to small versus large entities. Based on profitability analysis above, the proposed action, if adopted, will not have significant adverse economic impacts on these small business 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

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

Dated: January 9, 2017.

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 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 § 300.24, revise paragraph (u) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(u) Use a United States commercial fishing vessel in the Convention Area to target, retain on board, transship or land Pacific bluefin tuna in contravention of § 300.25(g)(3) through (5).

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4. In § 300.25, revise paragraph (g) to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(g) *Pacific bluefin tuna (*Thunnus orientalis*) commercial catch limits in the eastern Pacific Ocean for 2017-2018.* The following is applicable to the U.S. commercial fishery for Pacific bluefin tuna in the Convention Area in the years 2017 and 2018.

(1) For the calendar year 2017, all commercial fishing vessels of the United States combined may capture, retain, transship, or land no more than 425 metric tons in the Convention Area.

(2) In 2018, NMFS will publish a notice in the **Federal Register** announcing the 2018 catch limit. For the calendar year 2018, all commercial fishing vessels of the United States combined may capture, retain on board, transship, or land no more than the 2018 annual catch limit. The 2018 catch limit is calculated by adding any amount of the 425 metric ton catch limit that was not caught in 2017, as determined by NMFS, to 175 metric tons, except as follows:

(i) If 175 metric tons or less are caught in 2017, as determined by NMFS, then the 2018 catch limit is 425 metric tons; or,

(ii) If greater than 425 metric tons are caught in 2017, as determined by NMFS, then the 2018 catch limit is calculated by subtracting the amount caught in 2017 from 600 metric tons.

(3) In 2017 and 2018, a 25 metric ton trip limit will be in effect until NMFS anticipates that catch will be within 50 metric tons of the catch limit, after which a 2 metric ton trip limit will be in effect upon publication of a notice in the **Federal Register** by NMFS.

(4) After NMFS determines that the catch limits under paragraphs (g)(1) and (2) of this section are expected to be reached by a future date, NMFS will publish a fishing closure notice in the **Federal Register** announcing the effective date that targeting, retaining on board, transshipping or landing Pacific bluefin tuna in the Convention Area shall be prohibited as described in paragraph (g)(5) of this section.

(5) Beginning on the date announced in the fishing closure notice published under paragraph (g)(4) of this section through the end of the calendar year, a commercial fishing vessel of the United States may not be used to target, retain on board, transship, or land Pacific bluefin tuna captured in the Convention Area, with the exception that any Pacific bluefin tuna already on board a fishing vessel on the effective date of the notice may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided such Pacific bluefin tuna is landed within 14 days after the effective date published in the fishing closure notice.

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