



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 170815764-7877-01]

RIN 0648-BH12

International Fisheries; Pacific Tuna Fisheries; Revised 2017 Fishing Restrictions for Tropical Tuna in the Eastern Pacific Ocean

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 amendments to Resolution C-17-01 (*Conservation of Tuna in the Eastern Pacific Ocean During 2017*) per Resolution C-17-02 (*Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean During 2018-2020 and Amendment to Resolution C-17-01*) which was adopted by the Inter-American Tropical Tuna Commission (IATTC or Commission) in July 2017. Applicable to the purse seine fleet fishing for tropical tunas (bigeye, yellowfin, and skipjack tuna) in the eastern Pacific Ocean (EPO) and only for the remainder of the 2017 calendar year, the amendments to Resolution C-17-01 remove the total allowable catches (TACs) for bigeye tuna (BET) and yellowfin tuna (YFT), and replace them with an extension in the purse seine closure period from 62 days to 72 days. Additionally, to ensure that the time/area closure, known as the corralito, does not overlap with the extended closure periods, the amendments also

shift the dates for the corralito closure. This rule is necessary for the conservation of tropical tuna stocks in the EPO and for the United States to satisfy its obligations as a member of the IATTC.

DATES: This final rule is effective [*insert date of publication in FEDERAL REGISTER*].

ADDRESSES: Copies of supporting documents that were prepared for this final rule, including the regulatory impact review (RIR) are available via the Federal e-Rulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2017-0024 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: Taylor Debevec, NMFS at 562-980-4066.

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. In 2003, the IATTC took the first step to dramatically revise the 1949 Convention by adopting 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), which did not enter into force until 2010 when the requisite number of members agreed to the revisions. After the Antigua Convention had entered into force in 2010, the United States acceded to the Antigua Convention on February 24, 2016. The

full text of the Antigua Convention is available at:

https://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. The IATTC 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 Antigua 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.

IATTC Resolution on Tropical Tuna Conservation

The IATTC adopted Resolution C-17-02 by consensus at its 92nd meeting in July 2017. While the Resolution contains management measures for tropical tuna in the

Convention Area for 2018-2020, it also contains amendments to C-17-01, which is applicable in 2017 only. The measures for 2018-2020 will be implemented in a different rulemaking. In contrast, this rule implements only the amendments to C-17-01 because they are applicable immediately and therefore need to be expeditiously implemented.

The IATTC adopted Resolution C-17-01 in February 2017. C-17-01 included a provision not previously utilized in recent IATTC resolutions: Convention Area-wide TACs for yellowfin and bigeye tuna caught by purse seine vessels. As the 92nd Meeting of the IATTC approached in July 2017, the purse seine catch levels were monitored by the IATTC staff, who notified the IATTC that the TAC for class size 4 to 6 purse seine vessels fishing on floating objects (97,711 metric tons) was near its limit. Due to the negative impacts an August closure would have on several countries, the Commission formulated an alternative solution that would relieve those social-financial impacts to industry while still protecting the stocks from overfishing. The IATTC scientific staff analyzed the conservation benefit of various alternatives for 2017 management of tropical tunas and recommended, as they had during previous meetings, extending the 62-day purse seine closure period.

Accordingly, the Commission agreed to amend C-17-01 to eliminate the TACs and extend the two closure period options from 62 days to 72 days. Two additional provisions of the amendment include:

- allowing vessels that harvest tunas by encircling dolphins¹ to fish with that method during the 10-day extension of the closure period (because the separate

¹ Some tuna fishing vessels in the Eastern Tropical Pacific Ocean intentionally chase pods of dolphin that are swimming along the ocean surface and set their nets around the dolphins in order to harvest the yellowfin tuna swimming beneath the dolphins. This practice is lawful and regulated.

TAC for that fishery was not close to being reached at the time of agreement to Resolution C-17-02), and

- shifting the dates of the time/area closure known as the corralito so that it does not overlap with the new dates of the closure periods.

Most provisions of Resolution C-17-01 remain unchanged by the amendments, including: full retention of tropical tunas on purse seine vessels, an opportunity to apply for exemption to the purse seine closure periods due to force majeure, and a country-specific bigeye tuna catch limit for longline vessels greater than 24 meters in length.

Final Regulations – Tuna Conservation Measures for 2017

This final rule is implemented under 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.

This rule removes the two TACs for yellowfin and bigeye tuna codified at 50 CFR 300.25(d): class size 4 to 6 purse seine vessels that fish on floating objects – 97,711 mt, and class size 6 vessels fishing in association (chasing and encircling) with dolphins – 162,182 mt. Under 50 CFR 300.25(e), the two closure period options for class 4 to 6 purse seine vessels (each vessel must choose only one by which it will abide) are extended from 62 days to 72 days as follows: July 29, 2017 – October 8, 2017, or November 9, 2017 – January 19, 2018. Purse seine vessels with a dolphin mortality limit may fish during the 10 days that are being added to the extended closure period they are observing, provided the vessels are not used to make sets on floating objects during those 10 days. Those periods are respectively September 29, 2017 – October 8, 2017, or November 9, 2017 – November 18, 2017. Lastly, the corralito area remains unchanged, but the dates of the closure are shifted to October 9, 2017 – November 8, 2017.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act of 1950 and other applicable laws.

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

There are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act (PRA), and the existing collection-of-information requirements still apply under Control Number 0648-0387. 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. All currently approved NOAA collections of information may be viewed at:

http://www.cio.noaa.gov/services_programs/prasubs.html.

The Assistant Administrator for Fisheries finds good cause, pursuant to 5 U.S.C. 553(b)(B), to waive advance notice and comment. The decision by the IATTC that is being implemented by this rule was made on July 28, 2017. NMFS has no discretion to change this decision. This decision is binding under international law, and failure to ensure domestic implementation would render the nation out of compliance with our international treaty obligations, as well as failing to adequately conserve and manage target stocks of tropical tuna. Therefore, providing advance notice and consideration of public comments before implementing this decision would be impracticable because the first closed period (described above) under the existing regulations ends on September

27, 2017, but under the newly adopted international treaty obligations, the United States must ensure that vessels subject to that first closed period are prevented from fishing beginning on September 28 for an additional 10 days. The public interest dictates that the nation adheres to international legal obligations and continues to adequately conserve and manage tropical tunas in the Pacific. Therefore, it would be impracticable and contrary to the public interest to publish a proposed rule and provide advance notice and comment before implementing the revisions to IATTC Resolution C-17-01.

The Assistant Administrator for Fisheries also finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of the rule. Since the binding IATTC resolution makes these measures effective immediately, and the extended closure dates begin on September 28, 2017, this rule must be enforceable at least by that date. As explained above, this date is set in a binding resolution and cannot be changed by NMFS. Failure to implement the resolution by this date would risk putting the United States out of compliance with our international Treaty obligations, as well as failing to adequately conserve and manage tropical tuna stocks in the Pacific.

Ensuring conservation of tropical tuna stocks in the EPO, and remaining in compliance with binding international obligations of the United States, by expedient domestic implementation of Resolution C-17-02 through issuing this final rule now rather than risking violation of our obligations or the health of tuna stocks is in the public's interest. Therefore, there is good cause to waive the otherwise applicable requirement for a 30-day delay in effectiveness.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), requires an RFA analysis only for rules subject to notice and comment rulemaking under Section 553(b) of the

Administrative Procedure Act or any other law. Because notice and comment are not required for this rule, as described above, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 300

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

Dated: September 26, 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, subpart C is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart C, continues to read as follows:

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

§ 300.24 [Amended]

2. In § 300.24, remove paragraph (ii).

3. In § 300.25, remove and reserve paragraph (d) and revise paragraphs (e)(1), (e)(3), and (e)(6) to read as follows:

§ 300.25 Fisheries management.

* * * * *

(e) ***

(1) *Closure periods*—(i) *General rule*. A commercial purse seine fishing vessel of the United States of class size 4-6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area for 72 days during one of the following two closure periods:

(A) From 0000 hours Coordinated Universal Time (UTC) July 29, 2017, to 2400 hours UTC October 8, 2017; or,

(B) From 0000 hours UTC November 9, 2017, to 2400 hours UTC January 19, 2018.

(ii) *Vessels with DMLs*. Notwithstanding paragraph (e)(1)(i) of this section, a purse seine vessel for which a dolphin mortality limit has been assigned may fish during 10 days of the closure period the vessel selected, if the vessel makes no floating object sets during this period. The respective 10-day periods are:

(A) From 0000 hours UTC September 29, 2017, to 2400 hours UTC October 8, 2017; and,

(B) From 0000 hours UTC November 9, 2017, to 2400 hours UTC November 18, 2017.

* * * * *

(3) If written notification is not submitted per paragraph (e)(2) of this section for a vessel subject to the requirements under paragraph (e)(1)(i) of this section, that vessel must adhere to the closure period under paragraph (e)(1)(i)(B) of this section.

* * * * *

(6) A fishing vessel of the United States of class size 4-6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on October 9 to 2400 hours on November 8 in 2017 to fish with purse seine gear within the area bounded at the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude.

* * * * *

[FR Doc. 2017-20950 Filed: 9/28/2017 8:45 am; Publication Date: 9/29/2017]