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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter III

[Docket No. 170925942-7999-01]

RIN 0648-BH30

International Fisheries; Pacific Tuna Fisheries; Revised 2018 Commercial Fishing Restrictions for Pacific Bluefin Tuna in the Eastern Pacific Ocean; 2018 Catch Limit

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 revise trip limits on the commercial catch of Pacific bluefin tuna applicable to 2018. U.S. commercial fishing vessels are subject to a biennial limit for 2017 and 2018. Preliminary estimates indicate that the catch limit in 2018 is approximately 120 metric tons (mt). To avoid exceeding the biennial limit, NMFS is proposing a 1-mt trip limit—except for large-mesh drift gillnet vessels, which would be subject to a 2-mt trip limit—throughout 2018 or until the 2018 catch limit is reached and the fishery is closed. This action is necessary to contribute to the rebuilding of Pacific bluefin tuna and for the United States to satisfy its obligations as a member of the Inter-American Tropical Tuna Commission (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-2017-0128, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0128>, 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-2017-0128” 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: <http://www.regulations.gov>, docket NOAA-NMFS-2017-0128, 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: 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 (Convention Area). The Convention Area is defined as waters of the eastern Pacific Ocean (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, shark, 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). Based on the results of the 2016 ISC stock assessment, NMFS determined that Pacific bluefin tuna continued to be overfished and subject to overfishing (82 FR 18434, April 19, 2017).

Implementation of IATTC Resolution on Pacific Bluefin Tuna in 2017

Recognizing the need to reduce fishing mortality of Pacific bluefin tuna, the IATTC has adopted catch limits, which were implemented by NMFS, in the Convention Area since 2012 (see 80 FR 38986, July 8, 2015). At its resumed 90th Meeting in October 2016, the IATTC adopted Resolution C-16-08. Resolution C-16-08 set a biennial 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.

In accordance with a Pacific Fishery Management Council (Council) recommendation, NMFS implemented the catch limits in Resolution C-16-08 with a 25-mt trip limit until catch is within 50 mt of the annual limit (i.e., annual limit is 425 mt in 2017) and a 2-mt trip limit when catch is within 50 mt of the annual limit (82 FR 18704, April 21, 2017). Although these trip limits were intended to assist with inseason management of the fishery, the annual limit was

exceeded in 2017. The catch rate was more rapid than anticipated, which caused the annual limit to be exceeded before the fishery was closed on August 28, 2017 (82 FR 40720). This series of events prompted NMFS and the Council to reconsider management measures for 2018 to avoid exceeding the biennial limit.

Council Recommendation for the Implementation of Resolution C-16-08 in 2018

At its September 2017 meeting, the Council recommended that NMFS establish a 1-mt trip limit throughout all of 2018 to avoid exceeding the biennial limit by only allowing vessels (e.g., drift gillnet, surface hook-and-line) to land Pacific bluefin tuna in small quantities. In this rule, NMFS is proposing a 1-mt trip limit applicable to all commercial U.S. vessels—except drift gillnet, which would be subject to a 2-mt trip limit—because it minimizes the potential to waste fish by forcing discards of any amount over the trip limit (also called “regulatory bycatch”), while preventing a derby-style fishery by larger fishing operations that was difficult to monitor in 2017. Landings by gear-type from 2007-2016 indicate that while a majority of landings by vessels other than purse seine have been less than 1 mt, some landings exceeded 1 mt (of 909 landings of Pacific bluefin tuna from vessels other than purse seine, 11 exceeded 1 mt, including one landing that exceeded 2 mt). Specifically, all but one of the landings that exceeded 1 mt were by drift gillnet vessels. In such cases, a 1-mt trip limit would result in regulatory bycatch. Based on historical fishing patterns, it is unlikely that the annual limit in 2018 would be exceeded with these trip limits because landings by vessels other than purse seine rarely exceeded 2 mt and total annual landings by vessels other than purse seine have not exceeded 40 mt. Additionally, as heard in testimony by the Council’s Highly Migratory Species Advisory Subpanel at the September 2017 Council meeting, the coastal purse seine vessels that opportunistically target Pacific bluefin tuna are not likely to target Pacific bluefin tuna under a trip limit as small as 1 mt.

Also at its September 2017 meeting, the Council recommended reopening the fishery for the remainder of 2017 to allow incidentally caught Pacific bluefin tuna to be landed and for proper record keeping for stock assessment purposes. NMFS, in consultation with the U.S. Department of State, decided not to act on that recommendation because re-opening the fishery after exceeding the 2017 annual limit was not contemplated under Resolution C-16-08. Lastly, fisheries likely to discard Pacific bluefin tuna during the remainder of 2017 include the drift gillnet fishery, which has logbook and observer requirements where discard information should be collected.

2018 Catch Limit

Preliminary estimates indicate that U.S. commercial vessels have already caught 480 mt of Pacific bluefin tuna in 2017. In accordance with regulations at 50 CFR 300.25(g)(2)(ii) and based on the preliminary estimates, the 2018 catch limit will be approximately 120 mt. NMFS continues to gather data on commercial catches of Pacific bluefin tuna. NMFS will publish the specific 2018 catch limit with the final rule to revise the 2018 commercial Pacific bluefin tuna regulations.

In accordance with the April 2017 final rule implementing Resolution C-16-08 (82 FR 18704) and regulations at 50 CFR 300.25(g), when NMFS determines that the catch limit is expected to be reached in 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 any bluefin on board are landed within 14 days after the effective date.

Proposed Regulations

This proposed rule would revise the trip limits for U.S. commercial vessels that catch Pacific bluefin tuna in the Convention Area for 2018. NMFS proposes that a 1-mt trip limit applicable to all U.S. commercial vessels except large-mesh drift gillnet vessels and a 2-mt trip limit applicable to large-mesh drift gillnet vessels would be in effect throughout all of 2018 or until the fishery is closed through the end of the 2018 calendar year because the annual limit is reached.

To conform to the requirements of 1 CFR 21.8, NMFS also proposes to insert "NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE" into the heading of 50 CFR, chapter III.

Classification

After consulting with the Department of State, 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. Under 5 CFR 200.2, for all businesses primarily engaged in the commercial fishing industry (NAICS 11411), the small business size standard for Regulatory Flexibility Act (RFA) compliance purposes only is \$11 million in annual gross receipts.

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. U.S. commercial catch of Pacific bluefin tuna from the IATTC 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) that catch Pacific bluefin tuna in small quantities, such as incidentally.

Revenues of coastal purse seine vessels are not expected to be significantly altered as a result of this rule, which is applicable to 2018 only. 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 ex-vessel revenue 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 U.S. 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 was \$1.31/kilogram. This amount is negligible relative to the fleet's annual revenue resulting from other species.

Since 2006, the average annual revenue per vessel from all finfish fishing activities for the U.S. fleet with landings of Pacific bluefin tuna in small quantities, such as from incidental catch, has been less than \$11 million. These vessels include drift gillnet, surface hook-and-line, and longline gear-types. 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 gears other than purse seine landed an annual average of 6.3 mt of Pacific bluefin tuna, worth approximately \$32,600. Of these landings, only one trip by a drift gillnet vessel exceeded 2 mt, and other vessels using gear other than purse seine did not exceed 1 mt per trip. As a result, it is anticipated that proposed reduced trip limits will not have a significant impact on these vessels. However, if reduced trip limits are not imposed throughout 2018, it is possible that the 2018 catch limit will be met or exceeded and the fishery closed. If the fishery is closed before the calendar year, regulatory discards by these fleets are likely. Such a scenario would result in a greater impact to the fleet that catches Pacific bluefin tuna in small quantities, as opposed to the coastal purse seine fleet, which would simply cease targeting of Pacific bluefin tuna. Additionally, by imposing reduced trip limits in 2018, it is likely that all incidentally caught fish could enter the U.S. market and be accounted for instead of being discarded in the event of a fishery closure. This could result in a greater conservation benefit for the overfished Pacific bluefin stock.

Although there are no disproportionate impacts between small and large business entities because all affected business entities are small, the impacts among the business entities will be

different. Implementation of the reduced trip limit for 2018 in this proposed action would impose a greater economic impact on the U.S. coastal purse seine fleet. Prior to the implementation of a 25-mt trip limit in 2015, these vessels landed an average of 30 mt per trip, and are capable of landing over 70 mt in a single trip (based on landings from purse seine vessels targeting Pacific bluefin in the EPO from 2004-2014). It is possible that the purse seine fleet would not fish for Pacific bluefin tuna if the trip limit is 2 mt or less. Under the current regulations at 50 CFR 300.25(g)(2) and taking into account the 2017 catch, which exceeded the 2017 annual limit by at least 50 mt, a total of about 120 mt is available to U.S. commercial vessels in 2018. Under the current regulations at 50 CFR 300.25(g)(3), NMFS would need to reduce the trip limit from 25 mt to 2 mt when catch reaches approximately 70 mt (i.e., catch is within 50 mt of the annual limit). Consequently, any reduced profitability for the coastal purse seine fleet during 2018 as a result of the proposed action is not significant.

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: November 29, 2017.

Alan D. Risenhoover,
Acting Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR chapter III is proposed to be amended as follows:

**CHAPTER III - INTERNATIONAL FISHING AND RELATED ACTIVITIES,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT
OF COMMERCE**

1. The heading for chapter III is revised to read as set forth above.

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

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

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

3. In § 300.25, revise paragraph (g)(3) to read as follows:

§ 300.25 Fisheries management.

* * * * *

(g) * * *

(3) In 2018, a 1 metric ton trip limit will be in effect, except for vessels using large-mesh (14 inch or greater stretched mesh) drift gillnet gear. In 2018, a 2 metric ton trip limit will be in effect for vessels using large-mesh drift gillnet gear.

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