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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 170815763-8270-02]

RIN 0648-BH13

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for Tropical Tuna in the Eastern Pacific Ocean for 2018 to 2020

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 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 at the 92nd Meeting of the Inter-American Tropical Tuna Commission (IATTC) in July 2017. This final rule implements the C-17-02 fishing management measures for tropical tuna (i.e., bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*)) in the eastern Pacific Ocean (EPO). This final rule imposes the following on purse seine vessels with carrying capacity greater than 182 metric tons (mt) fishing for tropical tuna in the EPO: a 72-day EPO-wide closure, a 31-day area closure, and a requirement that—with some exceptions—all tropical tuna be retained and landed. In addition, this final rule revises the restrictions for exemptions due to force majeure, establishes a bigeye tuna catch limit of 750 mt for U.S.

longline vessels greater than 24 meters in overall length, and regulates the use and design of fish aggregating devices. This final 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 rule is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*], except for the amendments to 50 CFR 300.24(qq) and 300.28(e), which are effective on January 1, 2019.

ADDRESSES: Copies of the Environmental Assessment, revised Regulatory Impact Review, and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2017-0129, or by contacting the Highly Migratory Species Branch Chief, Heidi Taylor, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90208, RegionalAdministrator.WCRHMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Rachael Wadsworth, NMFS at 562-980-4036.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2017, NMFS published a proposed rule in the *Federal Register* (82 FR 52700) to implement provisions of Resolution C-17-02 (*Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean During 2018-2020 and Amendment to Resolution C-17-01*) adopted by the Inter-American Tropical Tuna Commission (IATTC or Commission) by consensus at its 92nd meeting in July 2017, in Mexico City, Mexico. The proposed rule contains additional background information, including information on the IATTC and its Convention Area, the international obligations of the United States as

an IATTC member, and the need for regulations. The 30-day public comment period for the proposed rule closed on December 14, 2017.

The final rule is implemented under the Tuna Conventions Act (16 U.S.C. 951 *et seq.*). This final rule applies to U.S. purse seine and longline vessels greater than 24 meters (m) in overall length fishing for tropical tunas in the IATTC Convention Area from [*insert date 30 days after date of publication in the FEDERAL REGISTER*]. The IATTC 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.

As specified under Resolution C-17-02, the final rule continues to apply three regulations for the U.S. fleet that were in effect in 2017, revises several regulations for both purse seine and longline vessels, adds a description of the process for transferring longline bigeye tuna catch limits between countries, and imposes new restrictions on fish aggregating device (FAD) deployment and removal, reporting, and design standards. Because the preamble of the proposed rule contained detailed information on the maintained and revised measures, this final rule will briefly summarize these measures and include more detail on the new measures.

Regulations Continued from Previous Years

The final rule continues to apply the regulations effective in previous years, including 2017, for purse seine vessels of class sizes 4-6 (carrying capacity greater than 182 metric tons (mt)) fishing for tropical tuna in the EPO. This includes a 72-day EPO-wide fishing closure period, a time/area closure in the EPO for 31 days, and a requirement that all tropical tuna be retained on board and landed, except fish considered

unfit for human consumption for reasons other than size. The final rule continues to allow a single exception on the final set of a trip, when there may be insufficient space remaining to accommodate all the tuna caught in that set.

Regulations Continued from Previous Years with Some Revisions

The final rule also increases the catch limit from 500 mt to 750 mt for bigeye tuna caught in the EPO by U.S. longline vessels greater than 24 meters (m).

The final rule narrows the definition of force majeure and adjusts the number of days a purse seine vessel would need to observe the 72-day closure period, if granted a force majeure exemption, from 30 days to 40 days. The final rule allows the reduced closure period to be observed in the year the force majeure event occurred, or if the vessel already observed a 72-day closure period in the year the event occurred, in the following year. The final rule requires all size class 4-6 purse seine vessels granted an exemption due to force majeure to carry an observer.

NMFS is also adding a procedural requirement in the final rule to the regulations governing exemptions due to force majeure. Currently, the regulations do not have a required deadline for vessel owners or operators to submit information to NMFS for force majeure exemption requests. The final rule requires U.S. vessel owners or operators requesting an exemption due to force majeure to send the request to NMFS within 20 calendar days after the vessel has been unable to proceed to sea for the same amount of days as the closure period (i.e., 72 days). Although Resolution C-17-02 specifies that the request must be sent to the IATTC Secretariat "...at the latest one month after it happens," NMFS is requiring the information to be sent to NMFS within 20 calendar

days to allow for additional time to review and process the request before NMFS sends the information to the IATTC Secretariat.

In addition, the final rule removes two regulations that were in effect in 2017: (1) the exception for allowing a purse seine vessel with a dolphin mortality limit to fish for 10 days during the closure period; and (2) the exception that allowed purse seine vessels of class size 4 (*i.e.*, vessels with a carrying capacity between 182 and 272 mt) to make a single fishing trip of up to 30 days during the closure period, provided that any such vessel carries an observer.

New Regulations Beginning in 2018

Bigeye tuna longline transfers. Resolution C-17-02 regulates, for the first time, the practice of IATTC members or cooperating non-members (collectively known as CPCs) transferring catch limits for bigeye tuna in the EPO for longline vessels greater than 24 m in overall length. The previous IATTC resolutions on tropical tuna did not address transfers of bigeye tuna catch limit in the EPO. NMFS and U.S. Department of State are responsible for arranging any transfers of a bigeye tuna catch limit for the United States with another IATTC CPC. Currently, the IATTC CPCs with which the United States could conduct a transfer, per paragraph 16 of Resolution C-17-02, include China, Japan, South Korea, and Chinese Taipei. In accordance with paragraph 18 of Resolution C-17-02, NMFS and U.S. Department of State will ensure that the total catch limit transferred either to or from the United States does not exceed 30 percent of the catch limit designated to those IATTC CPCs or the United States, respectively, by the IATTC. In addition, these transfers may not retroactively cover an overage of a U.S.

catch limit for bigeye tuna. The United States may not retransfer to a CPC any of the transferred catch limit it receives from another CPC.

Per requirements of the Resolution, NMFS will notify the IATTC of the transfer 10 days in advance, either separately or with the other CPC transferring catch. The notification would specify the tonnage to be transferred and the year in which the transfer would occur. NMFS will be responsible for the management of the transferred catch limit, including monitoring and monthly reporting of catch.

If the United States engages in a transfer of a bigeye tuna catch limit with another CPC, NMFS will publish a notice in the *Federal Register* announcing the new catch limit for bigeye tuna in the EPO that is available to U.S. longline vessels over 24 m in overall length.

Restrictions on Active FADs. This final rule defines the term “Active FAD” as a FAD that is equipped with gear capable of tracking location, such as radio or satellite buoys. While the regulatory text of the proposed rule would not have prohibited the continued deployment of FADs that are not “active,” NMFS sought public comment on the potential burden of such a prohibition in order to facilitate enforcement, monitoring, and reporting. Subsequently, NMFS was informed by industry that all FADs deployed by U.S. purse seine vessels meet the criteria for “Active FADs.” Because the burden on U.S. industry would appear to be nonexistent under prevailing practice, but the management value is substantial, the final rule prohibits the deployment of FADs that are not Active FADs. Mere possession of non-Active FADs on a vessel is allowed under the regulations, but only Active FADs may be deployed by U.S. vessels in the IATTC Convention Area. Resolution C-17-02 specifies that an Active FAD may be activated only while it is

onboard a purse seine vessel. To implement this provision, the final rule specifies that an Active FAD will be considered active at all times unless/until the tracking equipment is removed and the vessel owner or operator notifies NMFS Highly Migratory Species (HMS) Branch or the IATTC that this FAD is no longer active (i.e., deactivated). In accordance with Resolution C-17-02, each purse seine vessel on the IATTC Regional Vessel Register that has a well volume of 1,200 m³ or more has a limit of 450 Active FADs that can be active at any one time.

Reporting on Active FADs. U.S. vessel owners and operators are required to maintain daily information on all Active FADs deployed in the water in the IATTC Convention Area and report this information monthly to the address specified by NMFS HMS Branch. NMFS will distribute guidance regarding the reporting requirements to U.S. purse seine vessel owners and operators prior to the effective date of the final rule. These reports must be submitted no later than 90 days after the month covered by the report. For example, reports covering the month of January 2018 must be submitted on or before May 1, 2018.

The final rule also requires that reports on FAD interactions, which are already required by regulations at 50 CFR 300.25(i), must be submitted within 30 days of each landing or transshipment of tuna or tuna-like species.

FAD deployment and removals. The final rule specifies that U.S. vessel owners, operators, and crew of purse seine vessels of class sizes 4-6 must ensure that FADs are not deployed during a period of 15 days prior to the start of the 72-day closure period selected by the vessel per 50 CFR 300.25(e)(1). In addition, the regulations specify that if a U.S. vessel owner, operator, and crew of a purse seine vessel of class size 6 chooses to

set on FADs during this 15 day period, they must remove from the ocean a number of FADs equal to the number of FADs set upon by the vessel during this same 15 day period.

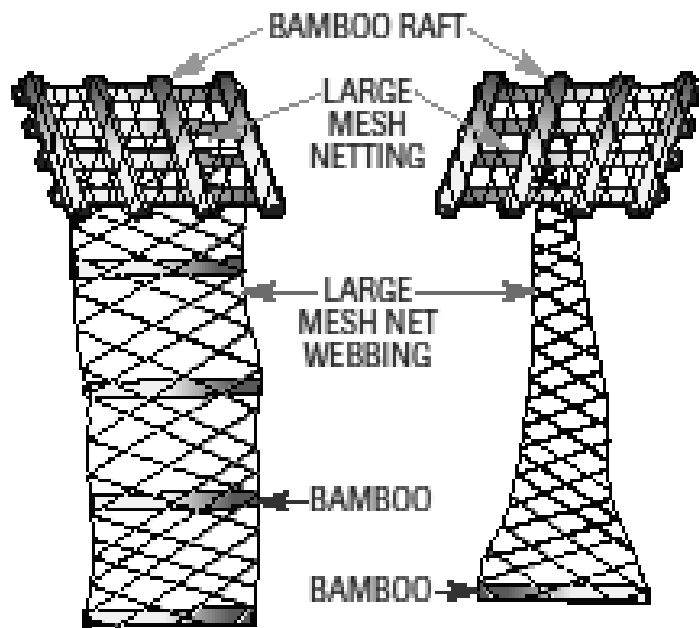
FAD designs to reduce entanglements. As specified under IATTC Resolution C-17-02, the FAD design requirements that are intended to reduce entanglements will become effective on January 1, 2019, which is later than the effective date for the rest of the rule. Resolution C-17-02 includes broadly worded restrictions on the use of entangling material on FADs. In the proposed rule, NMFS proposed two options to meet the Resolution restrictions by following guidance developed by the International Seafood Sustainability Foundation (ISSF) Guide for Non-Entangling FADs (ISSF Guide) (available at: <https://iss-foundation.org/knowledge-tools/guides-best-practices/non-entangling-fads/download-info/issf-guide-for-non-entangling-fads/>). The two options proposed were: (1) the “Lower Entanglement Risk FADs” (e.g., only small mesh netting (i.e., 7 cm/2.5 in or less stretched mesh) and must be tightly tied into bundles (“sausages”), or formed into a panel that is weighted so as to keep it taut); or (2) “Non-Entangling FADs” (e.g., no mesh netting in FAD) as described in the ISSF Guide. NMFS proposed these options to establish clear standards for FAD designs that meet the requirements of Resolution C-17-02. In addition, NMFS solicited information from the public on additional materials or configurations that have been demonstrated to reduce or avoid entanglements when used in FAD construction, but did not receive any new suggestions on FAD material or design.

NMFS received a comment from the American Tunaboat Association (ATA), which represents large U.S. purse seine vessels that fish in the EPO, on the proposed

regulations for FAD design. The ATA objected to these proposed regulations because the restrictions would go beyond the explicit requirements of Resolution C-17-02 and thereby create an unfair playing field for the U.S. fleet compared to the fleets of other IATTC CPCs. In consideration of ATA's comment, NMFS is modifying the proposed regulations in this final rule.

This final rule prohibits only two FAD design features that are suggested by ISSF to have the highest risk of entangling marine life. Based on ISSF guidance, FADs with the highest risk of entanglement use large mesh netting, such as 4.25 to 8 inch stretched mesh, that hang freely beneath the FAD (Figure 1). At this time, NMFS is not limiting the size of the net mesh used in the FAD design, but under the final rule, any netting used in the subsurface structure of the FAD must be tightly tied into bundles ("sausages"). In addition, if the FAD design includes a covered raft (e.g., flat raft or rolls of material) and if mesh netting is used for the cover, the mesh netting must be tightly wrapped around the entire raft such that no loose netting hangs below the FAD.

Figure 1. FAD design with highest risk of entanglement according to ISSF Guide for Non-entangling FADs (available at: <https://iss-foundation.org/knowledge-tools/guides-best-practices/non-entangling-fads/download-info/issf-guide-for-non-entangling-fads/>).



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NMFS believes that these requirements will effectively prohibit FAD designs that are most dangerous for bycatch species, such as sharks. Furthermore, the requirements are sufficiently specific to be enforceable. NMFS believes that these restrictions also will allow U.S. industry to operate on an equal playing field relative to our IATTC partners. NMFS recognizes that any netting used in a FAD may become loose over time, yet in order to achieve the intent of the Resolution, the netting must remain secure and tight whenever deployed. Therefore, NMFS reminds the fleet that in order to comply with these regulations, the purse seine operators must remain vigilant in maintaining and securing all mesh net used in FADs.

NMFS has opted to establish standards that are more specific than the Resolution to aid with compliance and enforcement, and further the intent of the Resolution that member nations should design and deploy FADs “to avoid entangling marine life.” NMFS recognizes that the IATTC is expected to conduct more work to define non-entangling FADs and to develop specific guidance on materials and designs for FADs. NMFS intends to work with the IATTC FAD Working Group and the Commission to clarify non-entangling FAD requirements to ensure consistency between IATTC CPCs. NMFS will update these regulations, as appropriate, when guidance is adopted by the IATTC.

Public Comments and Responses

NMFS received six comments during the 30-day public comment period that closed on December 14, 2017, and one comment after the comment period closed. Two comments were anonymous, two were from members of the public, and the remaining were from representatives of the Hawaii Longline Association (HLA), the Marine

Mammal Commission (MMC), and the ATA. Three commenters supported the regulations as proposed, and one opposed the proposed rule because the regulations proposed to increase the longline catch limit for bigeye tuna. One of the anonymous commenters did not comment on the proposed regulations directly, but expressed views on global warming, and although this topic is not entirely outside the general subject matter of fisheries management, it does not warrant a response. The other comments are detailed below with responses from NMFS.

Comment 1: The commenter expressed support for the proposed regulations and supported the use of tracking gear for researchers to monitor catch levels and closure areas. The commenter recommended this data be available to the public for assistance in monitoring vessels that break the rules.

Response: NMFS thanks the commenter for their support for the proposed regulations. In response to the commenter's request that vessels be tracked with the aim to aid in enforcement, NMFS notes that the IATTC requires the installation of a vessel monitoring system (VMS) unit for large tuna fishing vessels greater than 24 m in overall length fishing in the EPO (see 50 CFR 300.26). This information is used to aid in U.S. enforcement with fisheries regulations such as closure areas. The VMS information data for these vessels is sent to NMFS Office of Law Enforcement and U.S. Coast Guard and is used strictly for enforcement purposes; however, this information may not be released publically under the Trade Secrets Act because it is commercially confidential.

Comment 2: The commenter supported implementing the proposed regulations and noted that the United States should be a role model for other nations and should continue to ensure overfishing does not occur. The commenter also supported the

management measures on FADs and expressed the view that FADs should be banned in all countries throughout the year. The commenter noted that FAD fishing is inefficient and not worth the cost of all the marine life killed as bycatch in FADs.

Response: NMFS thanks the commenter for their support of the proposed regulations, and for highlighting the obligation of the United States to domestically implement measures adopted by the IATTC. In response to the commenter's recommendation that FADs be banned, this goes beyond the scope of this rule, which implements a specific resolution adopted by the IATTC. However, recommendations on new FAD management measures can be considered by the U.S. delegation when formulating U.S. positions during IATTC deliberations.

In response to the commenter's view that FADs are inefficient and contribute to wasteful bycatch, NMFS agrees that bycatch should continue to be mitigated through management measures. This final rule implements new restrictions on FADs, including requirements for designs that are intended to reduce the entanglement of bycatch species, such as sharks. NMFS intends to continue working with the IATTC Bycatch Working Group and the Commission to reduce bycatch in tuna fisheries in the EPO.

Comment 3: The commenter opposed these proposed regulations because it would increase the bigeye tuna catch limit for U.S. longline vessels greater than 24 m in overall length in the EPO. The commenter also expressed the view that the FAD regulations are not restrictive enough and should require biodegradable materials be used on FADs. In addition, the commenter recommended that catch levels for tunas should be decreased in the EPO and referenced papers on FADs and overfishing for tuna.

Response: NMFS thanks the commenter for their views on the proposed regulations. In response to the commenter's opposition to an increase in the U.S. bigeye tuna catch limit, the IATTC's goal is to manage stocks to levels that produce maximum sustainable yield (MSY) under the Antigua Convention. Because the stock assessment for bigeye tuna in the EPO conducted by the IATTC scientific staff in 2017 did not show the stock biomass to be below MSY or fishing levels to be above MSY, the IATTC approved this small increase for the United States. As explained in the Classification section of the proposed rule, the increase in U.S. catch limit of 250 mt represents a 0.45 percent increase of the total international catch limit in the EPO. The IATTC staff estimated that this increase represents less than a 1 percent increase in fishing mortality for the EPO stock of bigeye tuna.

In response to the recommendation for biodegradable FADs, NMFS agrees that biodegradable materials are useful to reduce marine debris. Although the IATTC has not adopted binding measure on biodegradable FADs, Annex II of IATTC Resolution C-16-01 urges the promotion of biodegradable FADs as a voluntary measure, and NMFS expects this issue to be discussed more in the IATTC FAD Working Group, as well as by the Commission.

Comment 4: HLA expressed support for the increase in the bigeye tuna longline catch limit from 500 to 750 mt and also for the proposed regulation to allow a transfer of bigeye tuna catch. In addition, HLA requested that NMFS ensure any transferred catch limit of bigeye tuna be expedited by prompt notice in the *Federal Register* to avoid delays that have occurred in the western Pacific Ocean when increases in catch limits have taken place.

Response: NMFS thanks HLA for its views on these regulations. If any catch limit is transferred to the United States from another CPC, NMFS will make every effort to promptly publish this notice in the *Federal Register*.

Comment 5: The ATA commented that the proposed requirements for “Lower Entanglement Risk FADs” and “Non-Entangling FADs” go beyond the requirements in Resolution C-17-02 and promote an unequal playing field that would disadvantage the U.S. purse seine fleet.

Response: NMFS thanks ATA for its perspective on the proposed regulations on “Lower Entanglement Risk FADs” and “Non-Entangling FADs.” In response to this comment, NMFS concluded that the proposed regulations were within the overall mandate of the Resolution to minimize entanglement and fell within the discretion of the Secretary to devise and promulgate an enforceable interpretation of a binding IATTC Resolution. However, NMFS agrees with the ATA that the specific material and gear requirements for non-entangling FADs need to be further clarified by the IATTC to ensure consistency. Therefore, NMFS has taken into consideration ATA’s comments in this final rule.

In the final rule, the proposal has been modified in a way that is still specific and aids with compliance and enforcement. The rule prohibits only design features that are shown by ISSF to have the highest risk of entangling marine life. Based on ISSF guidance, FADs with the highest risk of entanglement use large mesh netting that hangs freely beneath the FAD. Under these regulations, this design is prohibited and if any mesh netting is used in the subsurface part of the FAD it must be tightly rolled into “sausages.” This option was chosen because the standard can be understood by the

regulated community and is enforceable, while at the same time not being overly restrictive compared to other IATTC CPCs.

Although the text in Resolution C-17-02 is broad, many countries seem to be using FAD materials and designs that are consistent with the “Lower Entanglement Risk FADs” and “Non-Entangling FADs” as described by ISSF. According to information collected by ISSF, the U.S. purse seine fleet uses the highest risk of entangling materials on FADs and the majority of the other IATTC members surveyed by ISSF used a combination of the “Lower Entanglement Risk FADs” and “Non-Entangling FADs.”¹

Given that the FAD design provisions of the Resolution must be implemented no later than January 1, 2019, NMFS intends to keep working with the IATTC FAD Working Group and the Commission to clarify non-entangling FAD requirements to ensure consistency between IATTC CPCs. NMFS will update these regulations, as appropriate, when guidance is adopted by the IATTC.

Comment 6: The Marine Mammal Commission (MMC) supported the proposed regulations on FADs and, in particular, on non-entangling FADs. The MMC noted the large whale entanglements in FADs in other oceans, and stated that the design and management of FADs can have a considerable impact on various marine species, including marine mammals.

In addition, the MMC recommended that the U.S. delegation to the IATTC continue to press for sufficient observer coverage and vessel reporting requirements for all IATTC CPCs to provide reliable data on the impact of FADs and related purse seine fishing operations on cetaceans. Given the evidence that large whales interact with both

¹ ISSF 2017: available online at: <https://iss-foundation.org/download-monitor-demo/download-info/issf-2017-07-towards-global-non-entangling-fish-aggregating-device-fad-use-in-tropical-tuna-purse-seine-fisheries-through-a-participatory-approach/>

FADs and the tuna purse seine fisheries that deploy and set on FADS, the MMC believes that designing FADs that are less likely to entangle large fauna is an important effort that should be supported.

Response: NMFS thanks the MMC for its view on these proposed regulations and for highlighting the concern that FADs have the potential to entangle whales. NMFS notes that the IATTC requires 100 percent observer coverage on large purse seine vessels that fish with FADs. The observers onboard these purse seine vessels have reported interactions with whales and FADs. However, NMFS is not aware of discussions regarding interactions between whales and FADs within the IATTC. The IATTC and Agreement on the International Dolphin Conservation Program do not require observers on purse seine vessels with a carrying capacity of less than 363 mt; however, there are two situations where an observer is required on these vessels: (1) if the vessel of class sizes 1 to 5 (less than 363 mt in carrying capacity) has committed an infraction by setting on dolphins, or (2) if a purse seine vessel of class sizes 4-6 (more than 182 mt but less than 363 mt in carrying capacity) has been granted an exemption due to force majeure and wishes to fish during the closure period. The IATTC and Scientific Advisory Committee have discussed the need for observers on smaller vessels, including options for electronic monitoring, and the U.S. delegation has supported these recommendations.

In response to the request for NMFS to implement the Resolution requirement for non-entangling FADs, as explained in the preamble, NMFS will implement elements of the proposed regulations that are considered the highest risk for entanglement. NMFS recognizes the text in Resolution C-17-02 and C-16-01 needs to be clarified by the IATTC and NMFS intends to work on this issue within the IATTC.

Changes from the Proposed Rule

NMFS is changing the regulatory text in the final rule from the proposed rule that relate to Active FADs, material and designs to reduce entanglements on FADs, and the process for exemptions due to force majeure.

As explained in the preamble, NMFS is adding a prohibition against deploying non-Active FADs in the EPO. NMFS solicited input from the public on this particular issue and, through discussion with industry, learned that the U.S. already deploys only Active FADs. In addition, the final regulation limits the daily reporting requirement for Active FADs only to FADs that are deployed in the water.

For reasons explained in the preamble above and in response to public comment, NMFS is modifying the proposed regulations on “Lower Entanglement Risk FADs” and “Non-Entangling FADs.” NMFS is revising the proposed regulations on the FAD material and design to require any mesh netting used in the subsurface structure of the FAD to be rolled. If mesh netting is used for the cover of the FAD raft, the mesh netting shall be tightly wrapped around the entire raft such that no loose netting hangs below the FAD when deployed.

NMFS is adding a procedural requirement to the regulations governing exemptions due to force majeure to be consistent with Resolution C-17-02, which requires that any request be sent to the IATTC “at the latest” 1 month after the force majeure event. NMFS is requiring the information to be sent to NMFS within 20 calendar days after the vessel has been unable to proceed to sea for 72 days because of a force majeure event to allow for additional time to review and process the request before NMFS sends the information to the Secretariat. NMFS is adding this requirement to

ensure that any force majeure request submitted by U.S. purse seine vessel owners and operators are not disqualified by the IATTC Secretariat for issues related to timing of the request. The IATTC has final control over whether force majeure requests are accepted, and NMFS is adding the 20-day deadline to better ensure we are able to submit the requests to IATTC in a timely manner.

NMFS is removing the reference to carrying capacity in metric tons in 50 CFR 300.28(c) to be consistent with Resolution C-17-02 and to eliminate possible confusion with conversions between metric tons and cubic meters. In addition, NMFS is making various non-substantive revisions to the regulatory text for clarity or ease of reading.

Classification

After consultation with the Departments of State and Homeland Security, the NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act of 1950, as amended, and other applicable laws, subject to further consideration after public comment.

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

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB Control Number 0648-0148. NMFS amended the supporting statement for the West Coast Region Pacific Tuna Fisheries Logbook and Fish Aggregating Device Form, Office of Management and Business (OMB) PRA requirements (OMB Control No. 0648-0148) to include the data collection requirements for FADs as described in the preamble. NMFS estimates that the public reporting burden for this collection of information will average 3 minutes per

form, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a 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.

Pursuant to the Regulatory Flexibility Act, 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 during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. Further details on the factual basis for the certification were published in the proposed rule (November 14, 2017, 82 FR 52700) and are not repeated here. No comments were received regarding the certification, and none of the changes from the proposed to the final rule will increase costs to the affected public. Therefore, the certification published with the proposed rule that states this rule is not expected to have a significant economic impact on a substantial number of small entities is still valid. As a result, a regulatory flexibility analysis was not required and none was prepared.

The Assistant Administrator for Fisheries has determined that good cause exists under 5 U.S.C. 553(b)(B), to waive the requirement for providing advance notice and comment for requiring force majeure requests to be sent to NMFS within 20 calendar days to allow for additional time to review and process the request before NMFS sends the information to the IATTC Secretariat. If this regulation were delayed pending publication of a proposed rule and consideration of additional public comments, no time limits would be in place and therefore U.S. purse seine vessels might be disqualified by the IATTC Secretariat for issues related to the timing of the request. Additionally, this is a relatively minor procedural requirement that imposes a minimal regulatory burden.

List of Subjects in 50 CFR Part 300

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

Dated: April 5, 2018.

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

Subpart C—Eastern Pacific Tuna Fisheries

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

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

2. In § 300.21, add a definition, in alphabetical order, for “Active FAD” and revise the definition for “Force majeure” to read as follows:

§ 300.21 Definitions.

* * * * *

Active FAD means a FAD that is equipped with gear capable of tracking location, such as radio or satellite buoys. A FAD with this equipment attached shall be considered an Active FAD unless/until the equipment is removed and the vessel owner or operator notifies the IATTC or HMS Branch that the FAD is no longer active (i.e., deactivated).

* * * * *

Force majeure means, for the purpose of § 300.25, a situation in which a vessel at sea, except while transiting between ports on a trip during which no fishing operations occur, is disabled by mechanical and/or structural failure, fire or explosion.

* * * * *

3. In § 300.22, the section heading and the heading for paragraph (a) are revised, add a heading for paragraph (a)(1), and paragraph (a)(3) is added to read as follows:

§ 300.22 Recordkeeping and reporting requirements.

(a) *Logbooks and reporting on whale sharks and FADs--(1) Logbook reporting.**

* *

(3) *FAD data reporting for purse seine vessels--(i) Reporting on FAD*

interactions. U.S. vessel owners and operators must ensure that any interaction or activity with a FAD is reported using a standard format provided by the HMS Branch. The owner and operator shall ensure that the form is submitted within 30 days of each landing or transshipment of tuna or tuna-like species to the address specified by the HMS Branch.

(ii) *Reporting on Active FADs*. U.S. vessel owners and operators must record or maintain daily information on all Active FADs that have been deployed in the water in the IATTC Convention Area in the format and to the address provided by the HMS Branch. This information must be submitted for each calendar month no later than 90 days after the month covered by the report.

* * * * *

4. In § 300.24, revise paragraphs (m), (n), (ee), and (ff) and add paragraphs (kk) through (qq) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(m) Fail to stow gear as required in § 300.25(a)(4)(iv) or (e)(6).

(n) Use a fishing vessel of class size 4-6 to fish with purse seine gear in the Convention Area in contravention of § 300.25(e)(1), (2), or (5).

* * * * *

(ee) Fail to ensure characters of a unique code are marked indelibly on a FAD deployed or modified on or after January 1, 2017, in accordance with § 300.28(a)(2).

(ff) Fail to record or report data on FADs as required in § 300.22(a)(3).

* * * * *

(kk) Activate the transmission equipment attached to a FAD in a location other than on a purse seine vessel at sea as required in § 300.28(b).

(ll) Fail to turn on the tracking equipment for an Active FAD before deploying at sea as required in § 300.28(b).

(mm) Deploy a FAD in the IATTC Convention Area that is not an Active FAD.

(nn) Have more Active FADs than specified in § 300.28(c) in the IATTC Convention Area at any one time.

(oo) Deploy a FAD in the IATTC Convention Area during a period of 15 days prior to the start of the selected closure period in contravention of § 300.28(d)(1).

(pp) Fail to timely remove from the water a number of FADs in the IATTC Convention Area equal to the number of FADs set upon by the vessel during the 15 days prior to the start of the selected closure period as required in § 300.28(d)(2).

(qq) Deploy, or have onboard a vessel, a FAD in the IATTC Convention Area that fails to comply with the FAD design requirements in § 300.28(e).

5. Amend § 300.25 by:

a. Revising paragraphs (a)(1) and (2);

b. Adding paragraph (a)(5);

c. Revising paragraphs (e)(1) through (3), (e)(4) introductory text, and (e)(4)(ii);

d. Adding paragraphs (e)(4)(iii) and (iv);

e. Revising paragraphs (e)(5) and (6); and

f. Removing paragraphs (e)(7), (h), and (i).

The addition and revisions read as follows:

§ 300.25 Fisheries management.

(a) * * *

(1) Fishing seasons for all tuna species begin on 0000 hours Coordinated Universal Time (UTC) January 1 and end either on 2400 hours UTC December 31 or when NMFS closes the fishery for a specific species.

(2) For the calendar years 2018, 2019, 2020, there is a limit of 750 metric tons of bigeye tuna that may be caught by longline gear in the Convention Area by U.S. commercial fishing vessels that are over 24 meters in overall length. The catch limit within a calendar year is subject to increase if the United States receives a transfer of catch limit from another IATTC member or cooperating non-member, per paragraph (a)(5) of this section.

* * * * *

(5) If the United States engages in a transfer of a bigeye tuna catch limit with another IATTC member or cooperating non-member, NMFS will publish a notice in the *Federal Register* announcing the new catch limit that is available to U.S. commercial fishing vessels that are over 24 meters in overall length. All restrictions described in paragraphs (a)(1) and (3) through (4) of this section will continue to apply.

* * * * *

(e) *Purse seine closures.* (1) *72-day closure.* A commercial purse seine fishing vessel of the United States that is 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 in each of the years 2018, 2019, and 2020 during one of the following two periods:

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

(ii) From 0000 hours UTC November 9 to 2400 hours UTC January 19 of the following year.

(2) *Choice of closure period.* A vessel owner, manager, or association representative of a vessel that is subject to the requirements of paragraph (e)(1) of this section must provide written notification to the Regional Administrator declaring to which one of the two closure periods identified in paragraph (e)(1) of this section his or her vessel will adhere in that year. This written notification must be submitted by fax at (562) 980-4047 or e-mail at *RegionalAdministrator.WCRHMS@noaa.gov* and must be received no later than July 1 prior to the first closure period within a calendar year. The written notification must include the vessel name and registration number, the closure dates that will be adhered to by that vessel, and the vessel owner or managing owner's name, signature, business address, and business telephone number.

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

(4) *Request for exemption due to force majeure.* A request for exemption due to force majeure must be made to the Sustainable Fisheries Division within 20 calendar days after the vessel has been unable to proceed to sea for 72 days by fax at (562) 980-4047 or emailed to *RegionalAdministrator.WCRHMS@noaa.gov*. The request must include the name and official number of the vessel, vessel owner or manager's name and

signature, and evidence to support the request, which may include but is not limited to photographs, repair bills, certificates of departure from port, and in the case of a marine casualty, a completed copy of the U.S. Coast Guard Form CG-2692A (See 46 CFR 4.05-10).

* * * * *

(ii) If the request for an exemption due to force majeure is accepted by the IATTC, the vessel must observe a closure period of 40 consecutive days in the same year during which the force majeure event occurred, in one of the two closure periods described in paragraph (e)(1) of this section.

(iii) If the request for an exemption due to force majeure is accepted by the IATTC and the vessel has already observed a closure period described in paragraph (e)(1) of this section in the same year during which the force majeure event occurred, the vessel must observe a closure period of 40 consecutive days the following year the force majeure event occurred, in one of the two closure periods described in paragraph (e)(1) of this section.

(iv) Any purse seine vessel, for which a force majeure request is accepted by the IATTC, must carry an observer aboard authorized pursuant to the International Agreement on the International Dolphin Conservation Program.

(5) *31-day area closure.* 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 2018, 2019, and 2020 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.

(6) *Requirement to stow gear.* At all times while a vessel is in a time/area closed period established under paragraphs (e)(1) or (5) of this section, unless fishing under the exception under paragraph (e)(4) of this section, the fishing gear of the vessel must be stowed in a manner as not to be readily available for fishing. In particular, the boom must be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any, must be tied down; and launches must be secured.

* * * * *

6. Add § 300.28 to subpart C to read as follows:

§ 300.28 FAD restrictions.

(a) *FAD identification requirements for purse seine vessels.* (1) For each FAD deployed or modified on or after January 1, 2017, in the IATTC Convention Area, the vessel owner or operator must either: obtain a unique code from HMS Branch; or use an existing unique identifier associated with the FAD (*e.g.*, the manufacturer identification code for the attached buoy).

(2) U.S. purse seine vessel owners and operators shall ensure the characters of the unique code or unique identifier be marked indelibly at least five centimeters in height on the upper portion of the attached radio or satellite buoy in a location that does not cover the solar cells used to power the equipment. For FADs without attached radio or satellite buoys, the characters shall be on the uppermost or emergent top portion of the FAD. The vessel owner or operator shall ensure the marking is visible at all times during daylight. In circumstances where the on-board observer is unable to view the code, the captain or

crew shall assist the observer (*e.g.*, by providing the FAD identification code to the observer).

(b) *Activating FADs for purse seine vessels.* A vessel owner, operator, or crew shall deploy an Active FAD only while at sea and the tracking equipment must be turned on while the FAD is onboard the vessel and before being deployed in the water.

(c) *Restrictions on Active FADs for purse seine vessels.* U.S. vessel owners and operators of purse-seine vessels with the following well volume (m³) must not have more than the following number of Active FADs per vessel in the IATTC Convention Area at any one time:

Well volume (m³)	Active FAD limit
1,200 or more	450
426-1,199	300
213-425	120
0-212	70

(d) *Restrictions on FAD deployments and removals.* (1) U.S. vessel owners, operators, and crew of purse seine vessels of class size 4-6 (more than 182 metric tons carrying capacity) must not deploy a FAD during a period of 15 days prior to the start of the selected closure period described in § 300.25(e)(1).

(2) During the 15 days prior to the start of the closure period selected by the vessel per § 300.25(e)(1), U.S. vessel owners, operators, and crew of purse seine vessels of class size 6 (greater than 363 metric tons carrying capacity) must remove from the water a number of FADs equal to the number of FADs set upon by the vessel during that same 15 day period.

(e) *FAD design requirements to reduce entanglements.* No later than January 1, 2019, all FADs onboard or deployed by U.S. vessel owners, operators, or crew, must comply with the following design requirements:

(1) *Raft.* If the FAD design includes a covered raft (e.g., flat raft or rolls of material) and if mesh netting is used for the cover, the mesh netting shall be tightly wrapped around the entire raft such that no loose netting hangs below the FAD when deployed.

(2) *Subsurface.* Any netting used in the subsurface structure of the FAD must be tightly tied into bundles ("sausages").

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