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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

**[Docket No. 180716668-8668-01]**

**RIN 0648-BI37**

**International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for Fish Aggregating Devices 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 Resolution C-18-05 (*Amendment of Resolution C-16-01 on the Collection and Analysis of Data on Fish-Aggregating Devices*), which was adopted at the 93<sup>rd</sup> Meeting of the Inter-American Tropical Tuna Commission (IATTC) in August 2018. The Resolution includes construction standards for fish aggregating devices (FADs) intended to reduce entanglements of marine life when fishing 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 will revise the existing regulations for consistency with the new Resolution. In addition, this rule revises the definition of “Active FAD” and regulations related to activating FADs at sea that were codified in the April 2018 rule. This final rule is necessary for the conservation of living

marine resources in the EPO and for the United States to satisfy its obligations as a member of the IATTC.

**DATES:** This rule is effective [*Insert 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** Copies of the Regulatory Impact Review, and other supporting documents are available via the Federal eRulemaking Portal: *http://www.regulations.gov*, docket NOAA-NMFS-2018-0124, or by contacting the Highly Migratory Species Branch Chief, Heidi Taylor, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90208, *wcr.hms@noaa.gov*.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

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 vessels fishing for tropical tunas in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the EPO bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude.

##### **Changes from Final Rule Published in April 2018**

Resolution C-18-05 imposes new restrictions on FAD design standards. NMFS implemented FAD construction standards adopted by the IATTC in a final rule published on April 11, 2018, in the **Federal Register** (83 FR 15503) which implemented Resolution C-17-02 (*Conservation Measures for Tropical Tunas in the Eastern Pacific*

*Ocean During 2018-2020 and Amendment to Resolution C-17-01*). These regulations are set to become effective January 1, 2019.

Although Resolution C-17-02 included broadly worded restrictions on the use of entangling material on FADs, NMFS opted to establish standards that were more specific than the Resolution in the April 2018 final rule. NMFS did this to aid with compliance and enforcement and to further the intent of the Resolution that member nations require owners and operators of their vessels ensure FADs designed and deployed reduce entanglements of sharks, sea turtles, and other species.

Under the April 2018 final rule, U.S. vessel owners, operators, or crew must ensure any netting used in the subsurface structure of the FAD is 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.

### **New Regulations Beginning in 2019**

This final rule implements provisions in Resolution C-18-05 that specifies materials and designs that must be used to reduce entanglement on FADs; those specifications are only partially consistent with the April 2018 final rule. In accordance with Resolution C-18-05, this final rule gives fishermen an additional option for netting that hangs beneath a FAD, *i.e.*, netting with small mesh (stretched mesh size less than 7 centimeters) in a panel that is weighted on the lower end with at least enough weight to keep the netting taut in the water column. In addition, also in accordance with Resolution C-18-05, this final rule also requires that if mesh netting is used as part of the raft (*e.g.*, flat raft or rolls of material) then the mesh netting must be small mesh and must be tightly

wrapped such that no netting hangs below the FAD when deployed. This final rule also includes a definition for mesh as the distance between the inside of one knot to the inside of the opposing knot when the mesh is stretched, regardless of twine size.

These requirements are intended to prohibit FAD designs that are most dangerous for bycatch species, such as sharks. As stated in the preamble of the April 2018 final rule, NMFS recognizes that any netting used in a FAD may become loose over time. However, to achieve the intent of Resolution C-18-05, the netting must remain secure and tight whenever deployed. Therefore, NMFS reminds the fleet that in order to keep FADs in compliance with these regulations, the purse seine operators must remain vigilant in maintaining and securing all mesh net used in FADs.

Furthermore, NMFS recognizes that the IATTC may continue to conduct more work to define non-entangling FADs and to develop more specific guidance on materials and designs for FADs. The United States intends to continue working with the IATTC FAD Working Group and the IATTC on methods to reduce entanglements in FADs. These regulations are likely to be amended again in the next few years as the IATTC refines FAD design requirements.

Although Resolution C-17-02 does not specifically define an “Active FAD,” paragraph 10 of Resolution C-17-02 states that for the purposes of this resolution, a FAD is considered active when it: (a) is deployed at sea; and (b) starts transmitting its location and is being tracked by the vessel, its owner, or operator. The April 2018 Final rule codified a definition of “Active FAD” at 50 CFR 300.21 as 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). After publication of that rule, information became available to NMFS from both industry and the IATTC FAD Working Group meetings that revealed U.S. vessels and vessels from other countries often stop tracking the location of FADs, while the FAD is deployed on the high seas, but typically do not remove the tracking equipment from FADs. Sometimes vessel owners or operators sell the information or the right to access the existing tracking equipment to other vessel owners or operators; the new owners/operators then assume ownership and start tracking the FAD. The owner of the FAD also, at times, stop tracking the location of a FAD for a period of time and then “reactivate” and begin to track the location of the FAD again at a later time.

In re-evaluating the meaning of “Active FAD” in Resolution C-17-02, NMFS interprets paragraph 10(b) to mean that an Active FAD is a FAD that is being “tracked” by a vessel owner or operator. Therefore, in this rule, NMFS revises the definition of Active FAD to clarify that a FAD is considered Active when its location is being tracked by the vessel owner or operator using tracking equipment, such as radio or satellite buoys. A FAD shall be considered an Active FAD unless/until (i) the vessel is no longer tracking it, and (ii) the vessel owner or operator notifies the IATTC that the FAD is no longer active (*i.e.*, deactivated). In addition, NMFS is revising the prohibition at § 300.24 (kk) and FAD restrictions at § 300.28 (b) to clarify that “when deploying a FAD” the tracking equipment must be turned on. This revision is necessary to clarify that FADs already deployed at sea may be reactivated if they were previously deactivated.

## **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 does not require new collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The existing information collection approval requirements under Office of Management and Business (OMB) Control No. 0648-0148 (West Coast Region Pacific Tuna Fisheries Logbook and Fish Aggregating Device Form) covers the collections of information as amended by this rule. 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](http://www.cio.noaa.gov/services_programs/prasubs.html).

The Assistant Administrator for Fisheries has determined that the need to comply by January 2019 with the international obligations of the United States under a binding resolution adopted by the IATTC under the Antigua Convention constitutes good cause, under 5 U.S.C. 553(b)(B), to waive the requirement for providing advance notice and comment.

Good cause exists because the IATTC adopted Resolution C-18-05 at the end of August, effective January 2019, rather than adopting the resolution in June or early July,

which is the typical timing of the IATTC annual meeting. If the effectiveness of this rule were delayed pending publication of a proposed rule, consideration of additional public comments, and a 30-day delay in effectiveness, the U.S. would likely miss the January 2019 deadline and be out of compliance with a binding resolution. Additionally, the purse seine industry would be delayed in being allowed the option of using small mesh hanging in a panel beneath FADs, which we understand industry prefers to the current requirement that it be tied in a bundle.

Further rationale for finding good cause to waive advance notice and comment is that the proposed rule published on November 14, 2017, in the **Federal Register** (82 FR 52700) 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*), gave the public notice that the FAD design requirements were likely to be further refined. The revised requirements in Resolution C-18-05 are within the scope of the alternatives for FAD design discussed in that proposed rule. NMFS had initially proposed more stringent FAD construction requirements than those that were promulgated in the final rule. The changes between the proposed and final rule were made in consideration of a comment from the American Tunaboat Association (ATA) that proposed FAD design regulation went beyond the requirements in Resolution C-17-02 and would disadvantage the U.S. fleet.

The revisions to the Active FAD definition and regulations related to activating a FAD before deploying in the water will relieve restrictions, as explained in the preamble of this rule.

The owners and operators of the sixteen U.S. large purse seine vessels registered to fish in the EPO that would be impacted by the rule are already familiar with the measures adopted by the IATTC. In addition to sending professional representatives and lobbyists, many owners and operators personally attended the 2017 and 2018 IATTC meetings when Resolution C-17-02 and C-18-05 were adopted and were closely involved in briefings and discussions with U.S. State Department and NOAA leadership and staff. This action is necessary for the United States to satisfy its international obligations as a member of the IATTC.

As soon as the rule is published, NMFS will send a notice of this rule to owners of vessels that are affected by this rule. The Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), requires a Regulatory Flexibility Analysis only for rules promulgated through notice and comment rulemaking under Section 553(b) of the Administrative Procedure Act or any other law. Because there is good cause to waive notice and comment for this final rule, an RFA Analysis was not prepared for this 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, 2018.

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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 part 300, subpart C, continues to read as follows:

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

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

#### **§ 300.21 Definitions.**

\* \* \* \* \*

*Active FAD* means a FAD whose location is being tracked by the vessel owner or operator using tracking equipment, such as radio or satellite buoys. A FAD shall be considered an Active FAD unless/until the vessel is no longer tracking its location and the vessel owner or operator notifies the IATTC that the FAD is no longer active (*i.e.*, deactivated).

\* \* \* \* \*

*Mesh size* means the distance between the inside of one knot to the inside of the opposing knot when the mesh is stretched, regardless of twine size.

\* \* \* \* \*

3. In §300.24, revise paragraph (kk) to read as follows:

**§300.24 Prohibitions.**

\* \* \* \* \*

(kk) When deploying a FAD, 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).

\* \* \* \* \*

4. In § 300.28, revise paragraph (b) and (e), added by the final rule at 83 FR 15510, April 11, 2018, to read as follows:

**§ 300.28 FAD restrictions.**

\* \* \* \* \*

(b) *Activating FADs for purse seine vessels.* When deploying a FAD, a vessel owner, operator, or crew shall turn on the tracking equipment while the FAD is onboard the purse seine vessel and before it is deployed in the water.

\* \* \* \* \*

(e) *FAD design requirements to reduce entanglements.* 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 raft (*e.g.*, flat raft or rolls of material) and if mesh netting is used as part of the structure, the mesh netting shall have a mesh size less than 7 centimeters and the mesh net must be tightly wrapped such that no netting hangs below the FAD when deployed; and,

(2) Subsurface: Any netting used in the subsurface structure of the FAD must be tightly tied into bundles ("sausages"), or have stretched mesh size less than 7 centimeters in a panel that is weighted on the lower end with at least enough weight to keep the netting taut in the water column.

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