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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

[Docket No. 200511-0133]

RIN 0648-BJ23

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for Silky Shark, Fish Aggregating Devices, and Observer Safety in the Eastern Pacific Ocean

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

ACTION: Final rule

SUMMARY: NMFS issues regulations under the Tuna Conventions Act to implement three Resolutions adopted by the Inter-American Tropical Tuna Commission (IATTC) in 2018 and 2019: Resolution C-19-01 (*Amendment to Resolution C-18-05 on the Collection and Analyses of Data on Fish-Aggregating Devices*); Resolution C-19-05 (*Amendment to the Resolution C-16-06 Conservation Measures for Shark Species, with Special Emphasis on the Silky Shark (Carcharhinus falciformis), for the Years 2020 and 2021*); and Resolution C-18-07 (*Resolution on Improving Observer Safety at Sea: Emergency Action Plan*). NMFS also issues regulations under the Marine Mammal Protection Act to implement a Resolution adopted by parties to the Agreement on the International Dolphin Conservation Program (AIDCP): Resolution A-18-03 (*On Improving Observer Safety At Sea: Emergency Action Plan*). This final rule is necessary for the United States to satisfy its obligations as a member of the IATTC and Party to the AIDCP.

DATES: The amendment to § 300.27(e) is effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*], and the remaining amendments are delayed.

NMFS will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Copies of supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2019-0149, or contact Rachael Wadsworth, NMFS WCR SFD, 7600 Sand Point Way NE, Building 1, Seattle, WA 98115, or WCR.HMS@noaa.gov.

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

SUPPLEMENTARY INFORMATION:

Background

On January 24, 2020, NMFS published the proposed rule in the **Federal Register** (85 FR 4250) to implement provisions of three IATTC Resolutions and one AIDCP Resolution on silky shark, data collection for fish aggregating devices (FADs), and observer safety. The proposed rule contains additional background information, including information on the IATTC, AIDCP, and Convention Areas; the international obligations of the United States as an IATTC member and Party to the AIDCP; and the need for these regulations. The 30-day public comment period for the proposed rule closed on February 24, 2020.

This final rule is implemented under the Tuna Conventions Act (16 U.S.C. 951 *et seq.*) and the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*). This rule applies to U.S. commercial fishing vessels that fish for tuna or tuna-like species in the IATTC Convention Area. 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.

Because the preamble of the proposed rule contained detailed information on the Resolutions, this final rule will briefly summarize these Resolutions and include more detail on the new regulations.

New Regulations

The new regulations implemented in the final rule as related to FAD data reporting, silky sharks, and observer safety are described below.

FAD Data Collection

Per Resolution C-19-01, this rule revises existing regulations for FAD data collection requirements to remove the reporting requirements for captains of purse seine vessels fishing on FADs that have observers onboard. Because IATTC observers are now collecting all of the information previously required on the FAD data collection form, the IATTC removed this requirement for captains. Captains are still required to provide the observer with the FAD identification code and, as appropriate, the other information in the standard format. On purse seine vessels without an observer aboard, the captain is still responsible for recording the information on the FAD form developed by the IATTC staff.

Silky Shark

This final rule bans the retention of silky shark by U.S. longline vessels in the IATTC Convention Area. Paragraph 5 of Resolution C-19-05 on silky shark requires establishment of an inspection system at landing ports for members and cooperating non-members that allow retention of silky shark by longline vessels. However, NMFS

considered the time and effort required to implement a port inspection system and the impacts on U.S. longline vessels that would be subjected to such an inspection process. Given these considerations, NMFS determined that implementing the port inspection requirement of the Resolution would be more of a burden to the U.S. Government and the public than simply prohibiting all retention of silky shark on U.S. longline vessels in the IATTC Convention Area. Therefore, this rule institutes such a ban.

Because U.S. longline vessels fishing in the IATTC Convention Area do not target, and infrequently catch, silky sharks, a retention ban for longline vessels would not impact current fishing practices. Data from 2008 to 2015 indicate that virtually all incidentally caught silky sharks in the IATTC Convention Area were released by U.S. longline vessels, and almost all were released alive. In addition, such a prohibition in the eastern Pacific Ocean would be consistent with U.S. regulations in the western Pacific Ocean. Since 2015, U.S. vessels fishing in the western and central Pacific Ocean have been subject to a prohibition on the retention on board, transshipping, storing, or landing any part or whole carcass of a silky shark that is caught in the Western and Central Pacific Fisheries Commission Convention Area (50 CFR 300.226).

Per Resolution C-19-05, the final rule also increases flexibility for retention of silky shark on purse seine vessels that are not seen during fishing operations and are delivered into the vessel hold. Since January 2017, the IATTC Resolution and U.S. regulations have prohibited retention of silky shark on purse seine vessels caught in the IATTC Convention Area. This rule allows for exemptions in the case of any silky shark that is not seen during fishing operations and is delivered into the vessel hold. In such case, the silky shark may be stored on board and landed, but the vessel owner or operator

must surrender the whole silky shark to a government authority present at the point of landing. In U.S. ports the responsible governmental authority is the NOAA Office of Law Enforcement divisional office nearest to the port. If government authorities are unavailable, the whole silky shark must not be sold or bartered but must be donated for purposes of domestic human consumption consistent with relevant laws and policies. The vessel owner or operator shall report any silky sharks surrendered in this manner to the IATTC Secretariat by recording the incident in the note section of the IATTC Pacific Tuna Regional Logbook.

U.S. purse seine vessels do not target or intentionally retain silky shark in the IATTC Convention Area, yet they are caught incidentally and are primarily discarded. The regulations are expected to provide regulatory relief from the previous prohibition on the retention of silky shark that are not seen during fishing operations and are delivered into the vessel hold and frozen during fishing operations, which is an infrequent event for U.S. purse seine vessels.

Observer Safety

This final rule implements provisions of Resolutions C-18-07 and A-18-03 to strengthen protections for observers in longline and transshipment observer programs required by the IATTC and on purse seine vessels required by the AIDCP. Most of the requirements in these Resolutions are already required by procedures implemented by the U.S. Coast Guard (USCG) in its marine casualty regulations at 46 CFR part 4. This rule is intended to fill the gaps between the existing USCG procedures and these Resolutions. There are two categories of observer safety incidents (serious illness and harassment) that are specified in the IATTC and AIDCP decisions and are not included in USCG marine

casualty regulations. Regulations for situations involving serious illness and harassment are described below.

Per the Resolutions, this final rule includes requirements for vessel owners and operators to contact observer providers and appropriate government contacts in cases of serious illness, assault, intimidation, threats, interference, or harassment of observers. NMFS notes that some of these incidents lead to civil rather than criminal proceedings and can even involve circumstances that do not create emergency situations needing a specific or immediate response from the U.S. Government. The NMFS West Coast Regional Administrator has posted a list of appropriate contacts for U.S. Government offices as well as observer providers on the NMFS WCR website:

<https://www.fisheries.noaa.gov/west-coast/partners/emergency-contacts-vessel-owners-operators-and-observers-longline-and-purse>. This website includes emails and phone numbers, which are not referenced here.

The USCG continues to be the point of contact for other emergency situations that necessitate an immediate USCG search and rescue, or law enforcement response. NMFS WCR does not maintain a 24-hour hotline to handle such emergencies. Thus, in emergency situations that need an immediate response, vessel owners and operators are encouraged to contact the nearest U.S. Coast Guard Rescue Coordination Center (RCC) that can help coordinate with the closest Search and Rescue (SAR) facility in the area of the vessel: *<https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Response-Policy-CG-5R/Office-of-Incident-Management-Preparedness-CG-5RI/US-Coast-Guard-Office-of-Search-and-Rescue-CG-SAR/RCC-Numbers/>*.

In addition, this rule sets forth procedures the vessel owner or operator are required to follow in the event that an observer has a serious illness or injury. The owner or operator of a fishing vessel of the United States is required to immediately report serious illness or injury that threatens the life and/or long-term health or safety of an observer to the observer provider and a U.S. Government contact.

This rule requires that, in the event that the observer has a serious illness or injury that threatens his or her life and/or long-term health or safety, the owner or operator of the fishing vessel must: (i) immediately cease fishing operations; (ii) take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel, and where appropriate seek external medical advice; (iii) where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and (iv) cooperate fully in any official investigations into the cause of the illness or injury. The regulations specify that the owner or operator of the fishing vessel must “immediately cease fishing operations.” NMFS anticipates that there may be circumstances where “immediately cease” could allow for gear to be retrieved and NMFS does not encourage abandoning fishing gear.

This rule sets forth procedures the vessel owner or operator are required to follow in the event that an observer has been assaulted, intimidated, threatened or harassed. The rule requires that, in the event that an observer on a fishing vessel of the United States has been assaulted, intimidated, threatened or harassed, the owner or operator of the fishing vessel must: (i) immediately take action to preserve the safety of the observer and

mitigate and resolve the situation on board; (ii) if the observer or the observer provider indicate that they wish for the observer to be removed from the vessel, facilitate the safe disembarkation of the observer in a manner and place, as agreed by the observer provider, that facilitates access to any needed medical treatment; and (iii) cooperate fully in any official investigations into the incident.

In addition to serious illness and harassment cases, both Resolutions detail a number of requirements for vessel owners and operators specifically related to vessel operations, notification, search and rescue procedures, and investigations in the event of death, injury, serious illness, missing or presumed fallen overboard, or harassment of an observer. The United States requires U.S. vessel owners or operators to notify the USCG about marine casualties, which applies in the event of death, missing or presumed fallen overboard, or serious injury of an observer. The USCG regulations in 46 CFR part 4 specify requirements for notifications, reporting, and investigations. Thus, NMFS did not promulgate additional regulations for cases of death, missing or presumed fallen overboard, or serious injury of an observer. However, the Resolutions also require that the observer provider be notified in cases of an observer that dies or goes missing, and this rule includes requirements for the vessel owner or operator to notify the observer provider and a Government contact. Therefore, in the event that an observer dies, is missing or presumed fallen overboard, the owner or operator of a fishing vessel must immediately notify a U.S. Government contact and the observer provider.

Public Comments and Responses

NMFS received one comment during the comment period. This comment was outside the scope of the action and is not relevant to this rule.

Changes from the Proposed Rule

NMFS is making minor changes to the regulatory text in the final rule from the proposed rule. These changes are intended to make minor corrections and clarify the regulatory text; NMFS does not consider these substantive changes. In paragraph (e)(4) in § 216.24, the numbering of the first subordinate paragraph was corrected, and the regulatory text was changed to correct the format of a cross reference to another section number of the regulations. In paragraph (f) in § 300.27 on incidental catch and tuna retention requirements, the sentence describing the paragraph on silky shark regulations removes the word “unintentional” and adds “on purse seine vessels.” This text was revised because of difficulty enforcing the intentions of vessel owners or operators. In addition, paragraph (b) in § 300.29, as it relates to observer safety, is revised to clarify that it is the “the owner or operator of the” fishing vessel that must immediately notify a U.S. Government contact and the observer provider. Similarly, in paragraphs (c) and (d) in the same section, it is the “the owner or operator of the” fishing vessel that must take the actions described in the following text.

Classification

After consultation with the Department of State and Department of Homeland Security, the NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act of 1950, as amended, the Marine Mammal Protection Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for amendments to the West Coast Region Pacific Tuna Fisheries Logbook and Fish Aggregating Device Form (OMB Control No. 0648-0148) to only require FAD data collection for purse seine vessels without an observer onboard and require captains provide the observer with the FAD identification number is estimated to average 1 minute per form. The requirement to report silky shark surrendered or donated is also estimated to average 1 minute per form and the reporting related to observer safety on purses seine vessels is estimated to average 5 minutes per reporting incident. Public reporting burden for amendments to the supporting statement for the Pacific Islands Region Logbook Family of Forms (OMB Control No. 0648-0214) for reporting related to observer safety on longline vessels are estimated to average 5 minutes per reporting incident. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Regarding the elements of the rule pertaining to prohibiting retention of silky sharks on longline vessels; there are no new collection-of-information requirements associated with this action that are subject to the PRA, and existing collection-of-information requirements still apply under the following Control Numbers: 0648-0593 and 0648-0214.

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 that this final rule, if adopted, 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 (85 FR 4250, January 24, 2020) 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.

List of Subjects in 50 CFR Parts 216 and 300

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

Dated: May 11, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 216 and 300 are amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

Subpart C—General Exceptions

2. In § 216.24, remove “Southwest Region” and add in its place “West Coast Region” everywhere it appears and add paragraphs (e)(4)(i) and (ii) to read as follows:

§216.24 Taking and related acts in commercial fishing operations including tuna purse seine vessels in the eastern tropical Pacific Ocean.

* * * * *

(e) * * *

(4) * * *

(i) Requirements for owners and operators of U.S. purse seine vessels for reporting and actions in response to observer safety are at § 300.29 of this title.

(ii) [Reserved]

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PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

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

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

4. In § 300.22, revise paragraph (a)(3)(i) to read as follows:

§ 300.22 Recordkeeping and reporting requirements.

(a) * * *

(3) * * *

(i) *Reporting on FAD interactions.* U.S. purse seine vessel operators shall provide the observer with the FAD identification code and, as appropriate, the other information in the FAD interaction standard format provided by the HMS Branch. U.S. vessel owners and operators, without an observer onboard, must ensure that any interaction or activity with a FAD is reported using a FAD interaction 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.

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5. In § 300.24, revise paragraphs (ff) through (hh) to read as follows:

§ 300.24 Prohibitions.

* * * * *

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

(gg) Use a commercial purse seine or longline fishing vessel of the United States to retain on board, transship, store, or land any part or whole carcass of a silky shark (*Carcharhinus falciformis*) in contravention of § 300.27(e).

(hh) Fail to follow observer safety requirements as specified under § 300.29.

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6. In § 300.27:

a. Effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*], revise paragraph (e); and

b. Delayed indefinitely, revise paragraph (f).

The revisions read as follows:

§ 300.27 Incidental catch and tuna retention requirements.

* * * * *

(e) *Silky shark restrictions for purse seine vessels.* The crew, operator, and owner of a commercial purse seine or longline fishing vessel of the United States used to fish for tuna or tuna-like species is prohibited from retaining on board, transshipping, storing, or landing any part or whole carcass of a silky shark (*Carcharhinus falciformis*) that is caught in the IATTC Convention Area, except as provided in paragraph (f) of this section.

(f) *Exception for silky shark caught and frozen on purse seine vessels.* In the case of a purse seine vessel operating in the IATTC Convention Area that catches a silky shark that is not seen during fishing operations and is delivered into the vessel hold, the silky shark may be stored on board and landed, but the vessel owner or operator must surrender the whole silky shark to the responsible government authority present at the point of landing. In U.S. ports the responsible governmental authority is the NOAA Office of Law Enforcement divisional office nearest to the port, or other authorized personnel. If no governmental authorities are available, the whole silky shark surrendered

must not be sold or bartered but must be donated for purposes of domestic human consumption consistent with relevant laws and policies. The vessel owner or operator shall report these incidences to the IATTC Secretariat by recording them in the IATTC Regional Purse Seine Logbook, or another form identified by NMFS.

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7. Add § 300.29 to subpart C to read as follows:

§ 300.29 Observers.

The following requirements apply to all on-board fisheries observers required under this subpart, which includes observers on purse seine, longline vessels, and transshipment carrier vessels, and while on a fishing trip in the IATTC Convention Area.

(a) *Contact information.* A full list of U.S. longline and IATTC purse seine observer providers and U.S. Government contacts for situations described in paragraphs (b) through (d) of this section is available at the following website:

<https://www.fisheries.noaa.gov/west-coast/partners/emergency-contacts-vessel-owners-operators-and-observers-longline-and-purse>.

(b) *Loss of life.* In the event that an observer dies, is missing, or presumed fallen overboard, the owner or operator of the fishing vessel must immediately notify a U.S. Government contact and the observer provider.

(c) *Serious illness or injury.* The owner or operator of a fishing vessel of the United States shall immediately report serious illness or injury that threatens the life and/or long-term health or safety of an observer to the observer provider and a U.S. Government contact. In addition, the owner or operator of the fishing vessel must:

(1) Immediately cease fishing operations;

(2) Take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel, and where appropriate seek external medical advice;

(3) Where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and

(4) Cooperate fully in any official investigations into the cause of the illness or injury.

(d) *Assault, intimidation, threat, or harassment.* For reporting violations in the event that an observer on a fishing vessel of the United States has been assaulted, intimidated, threatened, or harassed, the owner or operator of the fishing vessel shall immediately notify the observer provider and the NOAA Office of Law Enforcement West Coast Division Duty Officer line at (206) 526-4851 of the situation and the status and location of the observer. In addition, the owner or operator of the fishing vessel must:

(1) Immediately take action to preserve the safety of the observer and mitigate and resolve the situation on board;

(2) If the observer or the observer provider indicate that they wish for the observer to be removed from the vessel, facilitate the safe disembarkation of the observer in a manner and place, as agreed by the observer provider and a U.S. Government contact, that facilitates access to any needed medical treatment; and

(3) Cooperate fully in any official investigations into the incident.

[FR Doc. 2020-10407 Filed: 5/15/2020 8:45 am; Publication Date: 5/18/2020]