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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 200528-0149]

RIN 0648-BH59

International Fisheries; Eastern Pacific Tuna Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Area of Overlap Between the Convention Areas of the Inter-American Tropical Tuna Commission and the Western and Central Pacific Fisheries Commission

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

ACTION: Final rule.

SUMMARY: Under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA) and the Tuna Conventions Act, NMFS issues this final rule that revises the management regime for U.S. fishing vessels that target tunas and other highly migratory fish species (HMS) in the area of overlapping jurisdiction in the Pacific Ocean between the Inter-American Tropical Tuna Commission (IATTC) and the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The rule applies all regulations implementing IATTC resolutions in the area of overlapping jurisdiction and some regulations implementing WCPFC provisions. NMFS is undertaking this action based on an evaluation of the management regime in the area of overlapping jurisdiction, in order

to satisfy the obligations of the United States as a member of the IATTC and the WCPFC, pursuant to the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA) and the Tuna Conventions Act.

DATES: This rule is effective on [*insert date 30 days after date of publication in the FEDERAL REGISTER*], except for 50 CFR 300.218, which is delayed. NOAA will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Copies of supporting documents prepared for this final rule, including the regulatory impact review (RIR) and the environmental assessment (EA), as well as the proposed rule (84 FR 60040; November 7, 2019), are available via the Federal e-rulemaking Portal, at *www.regulations.gov* (search for Docket ID NOAA-NMFS-2018-0049). Those documents are also available from NMFS at the following address: Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

A final regulatory flexibility analysis (FRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this document.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to PIRO at the address listed above, by email to *OIRA_Submission@omb.eop.gov*, or by fax to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808-725-5033.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2018, NMFS published an advance notice of proposed rulemaking in the **Federal Register** (83 FR 27305) seeking public input about whether it should change the management regime for fishing vessels that target tunas and other HMS in the area of overlapping jurisdiction in the Pacific Ocean between the IATTC and the WCPFC. On November 7, 2019, NMFS published a proposed rule in the **Federal Register** (84 FR 60040) proposing to revise that management regime. The proposed rule was open for public comment until November 22, 2019.

This final rule is issued under the authority of the WCPFCIA (16 U.S.C. 6901 *et seq.*) and the Tuna Conventions Act (16 U.S.C. 951 *et seq.*). The United States is a member of both IATTC and WCPFC. NMFS implements decisions of WCPFC under the authority of the WCPFCIA and decisions of IATTC under the authority of the Tuna Conventions Act. The convention areas for the IATTC (IATTC Area) and WCPFC (WCPFC Area) overlap in the Pacific Ocean waters within an area bounded by 50° S latitude, 4° S latitude, 150° W longitude, and 130° W longitude (“overlap area”).

This final rule changes management of the overlap area in accordance with WCPFC and IATTC decisions (described below) regarding the overlap area. Specifically, this final rule changes management of the overlap area so that all NMFS regulations implementing IATTC resolutions apply in the overlap area. NMFS regulations implementing WCPFC conservation and management measures that place limits or restrictions on catch, fishing effort, and bycatch mitigation no longer apply in the overlap area, except that existing WCPFC regulations prohibiting transshipments at sea from or to purse seine vessels continue to apply. A few regulations implementing WCPFC

conservation and management measures, will continue to apply in the overlap area for the reasons described below, in the section that follows Table 1.

The WCPFC and IATTC decisions addressing the overlap area (IATTC Recommendation C-12-11, “IATTC-WCPFC Overlap Area,” and the WCPFC decision documented in “Summary Report of the Ninth Regular Session of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean,” Manila, Philippines, 2-6 December, 2012, paragraph 80, hereafter “WCPFC-IATTC joint decision on the overlap area”), broadly indicate that a member of both commissions, such as the United States, may decide and notify both commissions which commission’s conservation and management measures it intends to apply.

In the proposed rule, NMFS proposed that regulations implementing WCPFC measures that control fishing activity, such as purse seine fishing restrictions, longline fishing restrictions, and bycatch mitigation measures would no longer apply in the overlap area, and that WCPFC management measures related to monitoring, control, and surveillance (MCS) would continue to apply. NMFS stated in the proposed rule that it currently implements, and would continue to implement, the MCS measures pursuant to its obligations under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention).

As described in more detail in the **Comments and Responses** section below, NMFS received comments on the proposed rule expressing concern regarding continued application of WCPFC MCS management measures in the overlap area. In particular, U.S. purse seine industry representatives indicated that the requirement for vessels to

carry WCPFC observers in the overlap area is unnecessary and would make fishing in the overlap area more logistically complicated and unduly burdensome than if the rule did not continue to apply that requirement in the overlap area. If this requirement continues to apply, vessels would continue to need to carry two observers (an IATTC observer and a WCPFC observer) or carry a cross-endorsed observer¹ when fishing the overlap area.

NMFS has reexamined the proposed rule and believes the following regulations, proposed to be maintained in the overlap area in the proposed rule, need not apply in the overlap area for the United States to fulfill its obligations under the WCPF Convention:

- transshipment observer requirements (50 CFR 300.215(b) and (d));
- general requirements to carry WCPFC observers (50 CFR 300.215(c)(1) and (2));
- transshipping, bunkering, and net sharing requirements (50 CFR 300.216(b)(2)-(3) and (c));
- transshipment reporting requirements (50 CFR 300.218(b) and (d));
- discard reporting requirements (50 CFR 300.218(e));
- net sharing reporting requirements (50 CFR 300.218(f));
- daily purse seine fishing effort reports (50 CFR 300.218(g)); and
- purse seine observer coverage (50 CFR 300.223(e)).

Therefore, this final rule removes the above WCPFC regulations, in addition to those WCPFC regulations identified in the proposed rule, from application in the overlap area.

¹ A cross-endorsed observer is an observer that is “cross-endorsed” pursuant to a Memorandum of Cooperation between the WCPFC and the IATTC that specifies a process to allow the observer to meet the observer requirements of both organizations.

Under this final rule, a few other WCPFC regulations continue to apply in the overlap area, as explained in more detail below in the section describing the action.

The preamble to the proposed rule provides additional information on all relevant IATTC and WCPFC regulations, including additional information on the regulations that previously applied in the overlap area and the development of the proposed rule, which is not repeated here.

The Action

This final rule changes the definition of “IATTC Convention Area” at 50 CFR 300.21 to include the overlap area with respect to all the regulations at 50 CFR part 300, subpart C, with the effect that all regulations at 50 CFR part 300, subpart C, now apply in the overlap area (except in cases where particular regulations apply to more specific areas within the IATTC Area). The requirements under the Marine Mammal Protection Act and the Agreement on the International Dolphin Conservation Program (AIDCP), including observer requirements at 50 CFR 216.24(e), which already applied in the overlap area, continue to apply under the final rule. Table 1, below, lists the specific regulations, including citations, implementing WCPFC management measures and IATTC management measures that apply in the overlap area under the final rule. A detailed description of these regulations is provided in the proposed rule preamble and below.

In addition to those IATTC regulations described in the proposed rule, this final rule will apply several newly implemented IATTC regulations in the overlap area. Subsequent to publication of the proposed rule, NMFS published a final rule that expands the requirement for vessel owners to obtain International Maritime Organization (IMO)

numbers to include smaller U.S. vessels fishing for tuna and tuna-like species in the IATTC Area and relaxes the restrictions on retention of incidental catch by purse seine vessels (84 FR 70040; December 20, 2019; corrected in 85 FR 8198; February 13, 2020). Under that final rule, all purse seine vessels are required to release all billfish, ray (except mobulid ray), dorado, and other fish species, except tuna, tuna-like species, and fish retained for consumption aboard the vessel. That final rule became generally effective on January 21, 2020; however, new or revised requirements related to collection of information, including the new IMO number requirements, are not yet in effect. The regulations implementing this rule are found at 50 CFR part 300, subpart C, and are applicable in the overlap area.²

Under this final rule, the following regulations at 50 CFR part 300, subpart O, which implement WCPFC conservation and management measures, no longer apply in the overlap area³:

- transshipment observer requirements (50 CFR 300.215(b) and (d));
- general requirements to carry WCPFC observers (50 CFR 300.215(c)(1) and (c)(2));
- transshipping, bunkering, and net sharing requirements (50 CFR 300.216(b)(2)-(3) and (c));
- purse seine fishing effort limits (50 CFR 200.223(a));

² NMFS published a proposed rule on January 24, 2020 (85 FR 4250), to implement provisions in IATTC Resolutions C-19-01 (“Amendment to Resolution C-18-05 on the Collection and Analysis of Data on Fish Aggregating Devices (FADs)”), C-19-05 (“Amendment to the Resolution C-16-06 Conservation Measures for Shark Species, with Special Emphasis on the Silky Sharks (*Carcharhinus Falciformis*), for the Years 2020-2021”), and C-18-07 (“Resolution on Improving Observer Safety At Sea: Emergency Action Plan”), and AIDCP Resolution A-18-03 (“On Improving Observer Safety At Sea: Emergency Action Plan”).

³ This list includes those regulations that NMFS proposed removing from application in the overlap area under the proposed rule, as well as the additional regulations described above that were not included in the proposed rule.

- purse seine fish aggregating device (FAD) restrictions (50 CFR 300.223(b));
- purse seine catch retention requirements (50 CFR 300.223(d));
- purse seine observer coverage (50 CFR 300.223(e));
- purse seine sea turtle bycatch mitigation requirements (50 CFR 300.223(f));
- whale shark bycatch mitigation requirements (50 CFR 300.223(g)-(h));
- longline bigeye tuna catch limits (50 CFR 300.224(a));
- oceanic whitetip and silky shark interaction mitigation (50 CFR 300.226);
- and
- reporting requirements that are associated with the regulations listed above that would no longer apply in the overlap area (transshipment reporting requirements at 50 CFR 300.218(b) and (d); discard reporting requirements at 50 CFR 300.218(e); net sharing reporting requirements at 50 CFR 300.218(f); daily purse seine fishing effort reports at 50 CFR 300.218(g), and whale shark reporting requirements at 50 CFR 300.218(h))

Table 1 shows the regulations that apply and no longer apply in the overlap area under the final rule.

Table 1 -- Table of Regulations under the Final Rule

Regulations Implementing WPCFC Decisions		Regulations Implementing IATTC Decisions		
50 CFR 300 Subpart O	Applies in Overlap Area under Final Rule?	50 CFR 300 Subpart C or 50 CFR 216	Applies in Overlap Area under Final Rule?	Changed from Proposed Rule

§ 300.223(a) Purse seine fishing effort limits.	No	§ 300.25(e) Purse seine closures.	Yes	No
§ 300.223(b) Purse seine fish aggregating devices (FADs)	No	§ 300.28 Purse seine FAD restrictions	Yes	No
§ 300.223(d) Purse seine catch retention	No	§ 300.27(a) Tuna retention requirements for purse seine vessels	Yes	No
§ 300.223(f) Purse seine sea turtle mitigation	No	§ 300.27(c) Purse seine sea turtle handling and release	Yes	No
§ 300.223(g)-(h) Purse seine whale shark mitigation	No	§ 300.27(g)-(h) Purse seine whale shark restrictions for purse seine vessels	Yes	No
§ 300.224 Longline fishing restrictions.	No	§ 300.25(a) Longline tuna catch limits	Yes	No
§ 300.226 Oceanic whitetip shark and silky shark.	No	§ 300.27(d) Oceanic whitetip shark restrictions; § 300.27(e)-(f) Silky shark restrictions	Yes	No
No comparable requirements	N/A	§ 300.25(b) Use of tender vessels	Yes	No (though not included in description of proposed rule)
No comparable requirements	N/A	§ 300.25(f) Restrictions on fishing in proximity to data buoys	Yes	No
No comparable requirements	N/A	§ 300.25(g) Pacific bluefin tuna catch limits	Yes	No
No comparable requirements	N/A	§ 300.27(b) Release requirements for non-tuna species on purse seine vessels	Yes	No
No comparable requirements	N/A	§ 300.27(i)-(j) Mobulid ray restrictions	Yes	No
No comparable requirements	N/A	§ 300.27(k) Shark handling and release requirements for purse seine vessels	Yes	No
No comparable requirements	N/A	§ 300.27(l) Shark line prohibition for longline vessels	Yes	No
§ 300.212 WCPFC vessel permit endorsements	Yes	§ 300.22(b) IATTC vessel register requirements	Yes	No
§ 300.213 Vessel information requirements for fishing in foreign exclusive economic zones (EEZs)	Yes	No comparable requirements	N/A	No

§ 300.214 Compliance with Laws of Other Nations.	Yes	No comparable requirements	N/A	No
§ 300.215(c)(3), (c)(4), and (c)(5) Accommodating observers.	Yes	§ 216.24(e) Purse seine observers*	Yes	No
§ 300.215(b), (c)(1), (c)(2) and (d) Observers and Transshipment observers	No	No comparable requirements	N/A	Yes
§ 300.216(b)(1) Purse seine transshipment at sea	Yes	§ 300.25(c) Purse seine transshipment requirements	Yes	No
§ 300.216(b)(2)-(3) and (c) Transshipping, bunkering and net sharing.	No	No comparable requirements	N/A	Yes
§ 300.217 Vessel identification.	Yes	§ 300.22(b)(3)(ii) IMO numbers	Yes	No
§ 300.218 Reporting and recordkeeping requirements.	Yes**	§ 300.22 Recordkeeping and reporting requirements	Yes	Yes**
§ 300.219 Vessel monitoring system.	Yes	§ 300.26 Vessel Monitoring System.	Yes	No
§ 300.221 Facilitation of enforcement and inspection.	Yes	No comparable requirements	N/A	No
§ 300.223(e) Purse seine observer coverage	No	§ 216.24(e) Purse seine observers*	Yes	Yes
No comparable requirements	N/A	§ 216.24 Requirements for U.S. purse seine vessels fishing under the requirements of the AIDCP (<i>e.g.</i> , vessel and operator permit requirements, requirements for fishing on dolphins, <i>etc.</i>)*	Yes	No

* These regulations also implement provisions of the Marine Mammal Protection Act and the Agreement on the International Dolphin Conservation Program, and are not located at 50 CFR part 300, subpart C, but instead are located at 50 CFR part 216, subpart C.

** The transshipment reporting requirements at 50 CFR 300.218(b) and (d), the discard reporting requirements at 50 CFR 300.218(e), the net sharing reporting requirements at 50 CFR 300.218(f), the daily purse seine fishing effort reports at 50 CFR 300.218(g), and the whale shark reporting requirements at 50 CFR 300.218(h) no longer apply in the overlap area. The whale shark reporting requirements were described as no longer applicable in the overlap area under the proposed rule. However, the other requirements listed here that no longer apply in the overlap area are changes from the proposed rule.

Note: Titles of regulation sections have been modified in some instances to include additional descriptive information.

The narrative that follows provides an explanation of why certain WCPFC regulations continue to apply in the overlap area, while other WCPFC regulations no

longer apply in the overlap area, under this final rule. The narrative is organized into topic areas.

Recordkeeping and Reporting

The regulations at 50 CFR 300.218(a) for catch and effort reporting continue to apply in the overlap area under the final rule. NMFS is required to maintain these provisions to fulfill its obligations under the WCPFC Convention (see Annex III, Article 5, requiring vessel operators to “record and report vessel position, catch of target and non-target species, fishing effort, and other relevant fisheries data”).

The regulations for transshipment reporting and notices at 50 CFR 300.218(b) and (d) apply to transshipment of fish caught in the WCPFC Area and transshipped anywhere. Thus, they continue to apply to transshipments of fish caught in the WCPFC Area outside the overlap area and transshipped inside the overlap area under this final rule. However, these regulations no longer apply to transshipments of fish caught in the overlap area and transshipped in the overlap area.

The reporting requirements at 50 CFR 300.218 (e), (f), (g), and (h), regarding purse seine discards, purse seine net sharing, daily purse seine fishing effort, and whale shark encirclements no longer apply in the overlap area.

Vessel Authorizations and Information

The requirements for vessel owners and operators to apply for and obtain from NMFS an endorsement to fish in the WCPFC Area (WCPFC Area Endorsement) and to provide certain information to NMFS if the vessel is used for fishing in waters under the jurisdiction of a nation other than the United States (50 CFR 300.212 and 50 CFR 300.213) continue to apply in the overlap area. The United States is required by the

WCPF Convention to prohibit fishing vessels entitled to fly its flag to fish beyond its areas of national jurisdiction unless they have been authorized to do so and the United States must also “maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing in the [WCPF] Convention Area beyond its areas of national jurisdiction” and “ensure that all such fishing vessels are entered in that record” (Article 24, Paragraphs 2 and 4). Accordingly, to continue to fulfill these requirements, NMFS is maintaining the regulations at 50 CFR 300.212 and 300.213 in the overlap area.

Vessel Identification

The vessel identification requirements at 50 CFR 300.217 continue to apply in the overlap area. The requirements include specific vessel marking requirements as well as requirements for obtaining IMO numbers. NMFS must maintain the marking requirement to fulfill its obligations under both the WCPF Convention (see Annex III, Article 6, Paragraph 3, stating that vessels must be “marked and identified in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels or such alternative standard as may be adopted by the Commission”) and the regulations implementing the High Seas Fishing Compliance Act (see 50 CFR 300.36). NMFS is maintaining the requirement for obtaining IMO numbers in the overlap area (50 CFR 300.217(c)). A parallel IATTC regulation (50 CFR 300.22(b)) imposes the same requirement, so maintaining or removing the WCPFC regulation in the overlap area would have no effect on vessel owners and operators at this time. As noted above, NMFS has published a final rule that expands the requirement for vessel owners to obtain IMO numbers to include smaller U.S. vessels fishing for tuna and tuna-like species in the

IATTC Area (84 FR 70040; December 20, 2019; corrected in 85 FR 8198; February 13, 2020).

Observers

The majority of the requirements implementing WCPFC conservation and management measures regarding observers no longer apply in the overlap area under this final rule. However, the requirements for accommodating observers at 50 CFR 300.215(c)(3), (4), and (5) continue to apply in the overlap area, as they apply in all locations where a WCPFC observer is on board the vessel. The specific provisions regarding accommodation of WCPFC observers at 50 CFR 300.215(c) will continue to apply in the overlap area so there is no gap in these requirements, which are intended for the safety and well-being of WCPFC observers, just because the vessel has entered the overlap area.

Transshipment and Net Sharing

Requirements implementing the WCPFC decisions regarding transshipment and net sharing no longer apply in the overlap area under this final rule, except for the prohibition on transshipments at sea from or to purse seine vessels at 50 CFR 300.216(b)(1). NMFS is required to maintain the purse seine transshipment prohibition to fulfill its obligation under the WCPF Convention (see Article 29, Paragraph 5, stating that “transshipment at sea by purse seine vessels operating within the Convention Area shall be prohibited”). Regulations that implement IATTC management measures for transshipment also include prohibitions on at-sea transshipment for purse seine vessels (50 CFR 300.25(c)).

Vessel Monitoring System (VMS)

Regulations implementing WCPFC VMS measures continue to apply in the overlap area under this final rule (50 CFR 300.219). NMFS is required to maintain the VMS provisions in order to fulfill its obligations under the WCPF Convention (see Article 24, Paragraph 8, stating that “[e]ach member of the Commission shall require its fishing vessels that fish for highly migratory fish stocks on the high seas in the Convention Area to use near real-time satellite position-fixing transmitters while in such areas”).

NMFS implements the WCPFC VMS requirements so that the vessel owner and operator must continuously operate the VMS unit at all times, except that the VMS unit may be shut down while the vessel is at port or otherwise not at sea, provided that the owner and operator follows certain steps (50 CFR 300.219(c)(3)). Thus, similar to the requirements regarding accommodation of WCPFC observers, these regulations are not specific to a particular geographic area and continue to apply in the overlap area under this final rule.

Compliance with Laws of Other Nations

Regulations regarding compliance with laws of other nations (50 CFR 300.214) continue to apply in the overlap area under this final rule. NMFS is required to maintain this provision in order to fulfill its obligations under the WCPF Convention (see Annex III, Article 2, stating that vessel operators must “comply with the applicable national laws of each coastal State Party to this Convention in whose jurisdiction it enters and shall be responsible for the compliance by the vessel and its crew with such laws and the vessel shall be operated in accordance with such laws”).

Facilitation of Enforcement and Inspection

Regulations for facilitating enforcement and inspection (50 CFR 300.221)

continue to apply in the overlap area under this final rule. NMFS is required to maintain the regulations found in 50 CFR 300.221(a) in order to fulfill its obligations under the WCPF Convention. 50 CFR 300.221(a)(1) requires certain documentation be carried onboard, as required by Annex III, Article 6, Paragraph 1 of the WCPF Convention. This provision states that “the authorization issued by the flag State of the vessel and if applicable, any license issued by a coastal State Party to this Convention, or a duly certified copy...shall be carried on board the vessel at all times and produced at the request of an authorized enforcement official of any member of the Commission.” 50 CFR 300.221(a)(2) requires continuous monitoring of certain radio frequencies, as required by Annex III, Article 6, Paragraph 4 of the WCPF Convention, which states that vessel operators “shall ensure the continuous monitoring of the international distress and calling frequency 2182 khz (HF) or the international safety and calling frequency 156.8 Mhz (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities of the members of the Commission.” Title 50 CFR 300.221(a)(3) requires that an up-to-date copy of the International Code of Signals (INTERCO) is on board and accessible at all times, as required by Annex III, Article 6, Paragraph 5 of the WCPF Convention. Title 50 CFR 300.221(a)(4) requires specific provisions for facilitating the work of WCPFC transshipment monitors, as required by Annex III, Article 4, Paragraph 2, which states “[t]he operator shall allow and assist any person authorized by the Commission or by the member of the Commission in whose designated port or area a transshipment takes place to have full access to and use of facilities and equipment which such authorized person may determine is necessary to

carry out his or her duties, including full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish, and full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying. The operator shall also allow and assist any such authorized person to remove samples and gather any other information required to fully monitor the activity. The operator or any member of the crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with any such authorized person in the performance of such person's duties. Every effort should be made to ensure that any disruption to fishing operations is minimized during inspections of trans[s]hipments.”

The regulations at 50 CFR 300.221(b) set forth specific requirements regarding boarding and inspection on the high seas. NMFS is required by the WCPF Convention to implement procedures for boarding and inspection established by the WCPFC (see Article 26, Paragraph 3, stating that Commission members “shall ensure that fishing vessels flying its flag accept boarding by duly authorized inspectors in accordance with such procedures”). The regulations found in §300.221(b) implement those WCPFC procedures (Conservation and Management Measure (CMM) 2006-08, “Western and Central Pacific Fisheries Commission Boarding and Inspection Procedures”), and therefore, NMFS is maintaining these provisions in the overlap area.

The regulations at 50 CFR 300.221(c) require transiting fishing vessels to store gear when transiting in an area they are not authorized to fish, as required by Annex III, Article 6, Paragraph 6 of the WCPF Convention (“At all times when [a] vessel is navigating through an area under the national jurisdiction of a member of the Commission in which it does not have a license to fish, and at all times when the vessel is

navigating on the high seas in the Convention Area and has not been authorized by its flag state to fish on the high seas, all fishing equipment on board the vessel shall be stowed or secured in such a manner that is not readily available to be used for fishing”).

Comments and Responses

NMFS received 10 comment letters in response to the proposed rule, several of which included similar comments. Below, NMFS summarizes the matters raised in each of the individual comment letters, grouping similar comments together, and provides a response to each of these matters.

Comment 1: Several commenters expressed support for changing management of the overlap area so that regulations implementing IATTC decisions rather than regulations implementing WCPFC decisions would apply. One commenter stated that the IATTC rules are fairer, more transparent, and more clearly delineated in terms of the rules to be applied than are the WCPFC rules, thus reducing considerable uncertainty with respect to potential violations. According to the commenter, the IATTC regime establishes a more level playing field for the U.S. fleet when compared to other fleets; the management measures are more effectively monitored and enforced to ensure that everyone is abiding by the same rules. The commenter also stated that for these reasons, applying the IATTC rules to the overlap area would benefit the U.S. tuna purse seine fleet, which, according to the commenter, operates at a significant competitive disadvantage to its foreign competitors, and has been recently reduced in size by approximately one quarter due to the adverse economic conditions affecting the fleet. According to the commenter, if adopted and applied correctly, this proposed change could be one important step to mitigate these conditions and stabilize the current

situation. It would also respond to some of the concerns of American Samoa Governor Moliga regarding the adverse effects of current conditions on the economy of American Samoa.

Response: NMFS acknowledges the comments. This final rule maintains the regulations in the proposed rule that apply IATTC management measures in the overlap area.

Comment 2: Several commenters expressed concern that the proposal to continue the requirement for purse seine vessels to carry WCPFC observers on all fishing trips in the overlap area would make fishing in the overlap area more logistically complicated and more expensive than if those regulations did not continue to apply in the overlap area. One commenter stated that more U.S. purse seine vessels are choosing to fish exclusively in the IATTC Area for all or a significant part of the year, rather than in the exclusive economic zones (EEZs) of Pacific island parties to the South Pacific Tuna Treaty. If the requirement to carry a WCPFC observer continues in the overlap area, vessels would continue to need to carry two observers (an IATTC observer and a WCPFC observer) or to carry a cross-endorsed observer when fishing in the overlap area. Commenters stated that all cross-endorsed observers are WCPFC observers that receive additional training from the IATTC to operate in the IATTC Area and that there are no cross-endorsed observers from the IATTC that are similarly approved to operate in the WCPFC Area. One commenter stated that a vessel departing from a port in the IATTC Area has two options for obtaining a WCPFC observer: (1) fly the observer to the port of departure, at the cost of the travel as well as lost fishing time of a week or more; or (2)

steam to Christmas Island or other port to pick the observer up, again at the loss of significant fishing time and fuel costs in excess of \$20,000.

One commenter stated that it is important to note that purse seine vessels currently fishing exclusively in the IATTC Area do not embark cross-endorsed observers and thus are not able to fish in the overlap area. According to the commenter, maintaining the existing observer requirements for the overlap area would perpetuate this inequity, run counter to the proposed rule's specified intent of applying IATTC rules instead of WCPFC rules in the overlap area, and significantly reduce the potential benefits of the proposed rule to the purse seine fleet. The commenter also stated that the EA for the proposed rule shows that requiring cross-endorsed observers and other WCPFC MCS measures in the overlap area in addition to IATTC regulations would not provide any additional conservation benefit.

Commenters requested NMFS to modify the proposed rule so that purse seine vessels fishing exclusively in the IATTC Area, including the overlap area, not be required to carry WCPFC observers, and be subject to only the IATTC-related observer requirements. One commenter stated that it understood that this is the practice of all others that are Contracting Parties to both the WCPF Convention and the Convention for the Strengthening of the Inter-America Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), and NMFS' rationale for maintaining both requirements is unclear. According to the commenter, NMFS' 2016 rule regarding the overlap area did continue to apply both WCPFC and IATTC observer requirements for purse seine vessels, but stated that NMFS only continued to apply the IATTC observer requirements

at 50 CFR 300.22(b) to fulfill U.S. obligations under the AIDCP (2016 final rule; 81 FR 24501; April 26, 2016). The proposed rule does not similarly identify any U.S. treaty obligations that would be undermined or abrogated by following the clear intent of the WCPFC-IATTC joint decision on the overlap area. The commenter stated that the proposed rule draws an unwarranted and unsupported distinction between conservation and management measures for fish stocks and those for MCS purposes that runs contrary to the decisions of both organizations and fails to acknowledge that all WCPFC decisions related to the operations of fishing vessels, including those for MCS purposes, are implemented by binding conservation and management measures. The commenter stated that with respect to the continued application of certain WCPFC rules in the overlap area, the concern is not with the application of the requirements themselves. The concern is that the continued application of the WCPFC MCS measures in the overlap area appears to require vessels to carry cross-endorsed observers, which, as noted, will unnecessarily limit the benefits of the proposed rule for vessels fishing exclusively in the IATTC Area. Another commenter stated that it did not believe that there are issues relating to legal obligations for carrying an observer under either the WCPF Convention or the Antigua Convention, since both conventions require purse seine vessels just to carry an observer, and do not specify that the observer needs to be a WCPFC observer or an IATTC observer.

Response: As stated above, NMFS has reconsidered the specific WCPFC observer coverage requirements for purse seine vessels in 50 CFR 300.223(e). We agree that NMFS need not apply the observer provisions in 50 CFR 300.223(e) in the overlap area in order for the U.S. to fulfill its obligations under the WCPF Convention. Moreover,

requiring both a WCPFC observer and an IATTC observer, or a cross-endorsed observer, would not provide any additional conservation or monitoring benefit, and may be cost-prohibitive for vessels fishing in the IATTC Area who wish to enter the overlap area. However, for the reasons discussed above, the requirements for accommodating observers at 50 CFR 300.215(c)(3) continue to apply in the overlap area.

In response to the comment that the proposed rule did not identify any U.S. treaty obligation that would be undermined by continuing to apply certain WCPFC regulations in the overlap area, NMFS has identified specific provisions of the WCPF Convention which impose continuing requirements upon NMFS in the overlap area. NMFS is continuing to apply WCPFC regulations which are necessary to continue to fulfill its obligations under the WCPF Convention. Please see discussion above for a description of these obligations.

Comment 3: One commenter objected to NMFS' conclusions that the proposed rule would not have any disproportionate economic impacts based on vessel size, gear, or homeport and that the rule would only bring modest increases in compliance costs to purse seine vessels. According to the commenter, the purse seine observer coverage requirements under the proposed rule would permanently prevent some vessels that are active on the IATTC Regional Vessel Register (RVR) from being able to fish in the overlap area. The commenter stated that since publication of the 2016 final rule, repeated requests have been made to NMFS to assist in getting IATTC observers approved as cross-endorsed observers, but there are still no IATTC observers that are cross-endorsed observers. In addition, the commenter stated that the WCPFC and the Pacific Islands Forum Fisheries Agency (FFA) have stated that a WCPFC observer will never be placed

on board a vessel that is not on the WCPFC Record of Fishing Vessels. Thus, according to the commenter, U.S. purse seine vessels that are on the IATTC RVR but not on the WCPFC Record of Fishing Vessels would not be permitted to fish in the overlap area under the proposed rule. The commenter stated that unlike IATTC vessels from every other nation, and any U.S. flagged purse seine vessel that operates in the WCPFC Area outside of the overlap area, its vessel would be completely excluded from fishing in the overlap area, and suffer the resulting disproportionate economic impact simply because it operates from a port in the eastern Pacific Ocean (EPO) instead of the western and central Pacific Ocean (WCPO).

In addition, the commenter stated, for vessels that are on both the IATTC RVR and the WCPFC Record of Fishing Vessels and operate from ports in the EPO, the requirement to carry a WCPFC observer results in trip delays and tens of thousands of dollars in additional costs for every fishing trip in the overlap area. According to the commenter, it takes the IATTC approximately 24 hours to assign an observer to a vessel leaving out of a port in the EPO, but the process to obtain a WCPFC observer that is a cross endorsed-observer is substantially more burdensome. The commenter stated that it takes at least two weeks advance notice to have a cross-endorsed observer assigned to a vessel in the EPO, if such as an observer is even available. According to the commenter, once the vessel owner notifies the FFA that a cross-endorsed observer is needed, the FFA begins the process of finding an observer who is willing to travel to South America. The vessel owner must then pay for a round trip ticket for the observer and obtain all required visas for the travel, which amount to approximately \$6,000 per trip. If the FFA cannot provide an observer willing to travel to South America, a vessel based out of an EPO port

must travel with an IATTC observer on board, cross into the WCPFC Area and pick up a WCPFC observer, and then enter the overlap area. Such a trip takes at least four days out of the way to get to the closest port in the WCPFC Area, which costs upwards of \$20,000 in fuel costs, in addition to the crew and other vessel costs and lost fishing time.

Response: Please see the response to Comment 2, above, regarding application of WCPFC purse seine observer coverage requirements in the overlap area under this final rule. The WCPFC observer coverage requirements for purse seine vessels found in 50 CFR 300.223(e) no longer apply in the overlap area under this final rule. The analysis in the FRFA below, provides an updated discussion of the compliance costs of the final rule, including a discussion of potential disproportionate economic impacts. NMFS notes that the requirement to carry a WCPFC observer on U.S. purse seine vessels when in the overlap area was not newly proposed in the proposed rule (*i.e.*, it was an existing requirement). Thus, the proposed rule would not have introduced any new compliance costs regarding observers for U.S. purse seine vessels when fishing in the overlap area, and would not have led to disproportionate economic impacts based on vessel size, gear, or homeport.

Comment 4: One commenter questioned why the WCPFC is giving up or ceding its right to determine fishing regulations in the overlap area.

Response: Under the WCPF Convention, the WCPFC continues to have management competence over the overlap area. However, the WCPFC and IATTC decided that members of both commissions, like the United States, can choose whether to apply WCPFC management measures or IATTC management measures in the overlap area (see WCPFC-IATTC joint decision on the overlap area). Table 1, above, shows the

domestic regulations implementing WCPFC decisions and which regulations implementing IATTC decisions that NMFS is applying in the overlap area under this final rule.

Comment 5: One commenter stated that the use of FADs can pose a serious risk to young fish populations, specifically juvenile yellowfin and bigeye tuna. The commenter requested that the more stringent FAD restrictions enacted through the WCPFC-derived regulations remain in effect and not be replaced by regulations implementing IATTC measures. According to the commenter, populations of younger yellowfin and bigeye tuna tend to congregate near FADs much more frequently than their adult counterparts. The commenter stated that FADs are believed to be effective because they provide fish with a sense of security from lurking predators in the open sea, and that younger fish seek this protection much more than adult fish. The commenter provided information regarding the behavioral tendencies of fish around FADs and cited a publication by the Pew Environment Group. According to the commenter, FADs place juvenile fish populations at risk of being overfished, which can lead to sharp declines in overall fish populations, and place our natural resources in jeopardy. The commenter stated that the regulations implementing the WCPFC 5-month FAD prohibition period should remain in effect in the overlap area.

Response: As stated in the EA, the change in application in the overlap area from the WCPFC purse seine fishing effort limits and FAD restrictions to the IATTC purse seine fishing seasonal closures and FAD restrictions could affect the fishing patterns and practices of U.S. purse seine vessels fishing in the overlap area, leading to greater fishing effort in the overlap area and possibly greater flexibility and fishing opportunities in the

WCPO as a whole. However, when agreeing on the joint WCPFC-IATTC decision on the overlap area, the WCPFC and IATTC recognized that a member may choose to apply the conservation and management measures of only the WCPFC or the IATTC. Moreover, as stated in the EA, because many other factors contribute to the status of the stocks (fishing activities by non-U.S. fleets, oceanographic conditions, etc.), and because the overlap area is a small part of the total area available for fishing in the Pacific Ocean, the direct and indirect effects to fish stocks from implementation of this final rule is expected to be small. The stocks of skipjack tuna, yellowfin tuna, and bigeye tuna in the Pacific Ocean are not currently in an overfished condition or experiencing overfishing (except the EPO stock of yellowfin tuna).

Comment 6: One commenter stated that the overlap area is an important fishing ground for the U.S. purse seine fleet based in American Samoa, due to the geographic proximity of the overlap area to American Samoa. The commenter also stated that U.S. purse seine vessels do not have to pay access fees for fishing on the high seas in the overlap area, unlike the access fees needed to fish in the EEZs of the Parties to the Nauru Agreement, Tokelau, and the Cook Islands. According to the commenter, the current practice of applying both the WCPFC and IATTC management measures to the overlap area is redundant and is a wasteful use of compliance, monitoring, surveillance and regulatory resources. Similarly, the commenter stated, the proposed rule seems wasteful and operationally impractical in that it requires both IATTC observers and WCPFC observers or a cross-endorsed observer for fishing in the overlap area. According to the commenter, cross-endorsed observers are not always available, so U.S. purse seine vessels operating from American Samoa may not be able to fish in the overlap area if an

IATTC observer or a cross-endorsed observer is unavailable. The commenter stated that the American Samoa government is trying to attract fishing vessels to operate out of American Samoa so that the canneries will have access to their catch; locally based U.S. purse seine vessels are critically important for the supply of tuna to the dependent economy. The commenter stated that U.S. purse seine vessels need access to the overlap area, but access would be effectively blocked if the vessels have to take observers from both the WCPFC and the IATTC and such observers or cross-endorsed observers are not available.

Response: NMFS acknowledges the comment. However, the term “current practice” in the comment is unclear to NMFS and NMFS does not know whether the commenter is referring to the regulatory changes described in the proposed rule or to regulations that were already in effect. Table 1 above details the regulations that were already in effect, the regulations that go into effect under this final rule, and the changes from the proposed rule. Please see the response to Comment 2, above, regarding application of WCPFC purse seine observer requirements in the overlap area under this final rule. The WCPFC observer coverage requirements for purse seine vessels found in 50 CFR 300.223(e) no longer apply in the overlap area under this final rule. U.S. purse seine vessels operating from American Samoa must comply with the IATTC observer measures for purse seine vessels found in 50 CFR 216.24(e) when operating in the overlap area, which can be satisfied by carrying either an IATTC observer or a cross-endorsed observer. The current list of cross-endorsed observers includes 86 individuals (list dated September 26, 2019), all from Pacific Island countries, and thus,

they are generally more readily available to depart from American Samoa than are IATTC observers.

Comment 7: A commenter stated that there is no need to have an area of overlap between two fishing commissions that manage tuna. According to the commenter, the IATTC covers more overall territory and the IATTC's distribution of fishing zones is more precise and evenly spaced. Thus, the commenter stated, it would be more efficient for the overlap area to be managed by the IATTC, but questioned what those on the U.S. west coast and in the Pacific islands would receive in return. According to the commenter, the proposed rule does not seem to provide a detailed solution to revoking territory from the WCPFC.

Response: NMFS acknowledges the comment. However, the matter raised by the commenter is outside the scope of this rulemaking. The WCPF Convention specifies the WCPFC's area of competence, which includes the overlap area, and the Antigua Convention specifies the IATTC's area of competence, which includes the overlap area. As these boundaries are established by international agreement, NMFS has no authority to alter them.

Comment 8: A commenter stated that there may be protocols in place between the IATTC and the Secretariat of the Pacific Community (and by extension WCPFC) for sharing observer data for vessels carrying IATTC observers in the overlap area. The commenter requests that NMFS consider whether any such arrangement might be sufficient to address the concerns expressed (by the same commenter) regarding the need for U.S. purse seine vessels fishing in the overlap area to carry a cross-endorsed observer.

Response: NMFS acknowledges the comment. As detailed in the response to Comment 2, above, the WCPFC purse seine observer coverage requirements at 50 CFR 300.223(e) no longer apply in the overlap area under this final rule.

Comment 9: One commenter requested protection for tuna fisheries and the areas where tuna live.

Response: NMFS acknowledges the comment. As detailed in Table 1, above, NMFS regulations that implement conservation and management measures for tuna fisheries apply in the overlap area under this final rule.

Changes from Proposed Rule

In this final rule, several regulations implementing WCPFC decisions, which would have applied in the overlap area under the proposed rule, no longer apply in the overlap area. These regulations are as follows:

- transshipment observer requirements (50 CFR 300.215(b) and (d));
- general WCPFC observer coverage requirements (50 CFR 300.215(c)(1) and (2));
- transshipping, bunkering, and net sharing regulations (50 CFR 300.216(b)(2)-(3) and (c));
- transshipment reporting requirements (50 CFR 300.218(b) and (d));
- discard reporting requirements at (50 CFR 300.218(e));
- net sharing reporting requirements at (50 CFR 300.218(f));
- daily purse seine fishing effort reports (50 CFR 300.218(g)); and
- purse seine observer coverage (50 CFR 300.223(e)).

The reasons for these changes from the proposed rule are described in greater

detail above in the **Background** section.

This final rule also includes an administrative change to the definition of Effort Limit Area for Purse Seine, or ELAPS, to further clarify that the regulations at 50 CFR 300.223(a) implementing WCPFC purse seine fishing effort limits, no longer apply in the overlap area, and an administrative change to the definition of overlap area. Based on NMFS' reexamination of the proposed rule, NMFS believes these administrative changes will help clarify the intent of the final rule.

Classification

The Assistant Administrator for Fisheries has determined that this final rule is consistent with the WCPFCIA, the Tuna Conventions Act, and other applicable laws.

Coastal Zone Management Act (CZMA)

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the State of Hawaii. NMFS submitted determinations to Hawaii and each of the Territories on February 7, 2019, for review by the responsible state and territorial agencies under section 307 of the CZMA. The CNMI replied by letter dated March 7, 2019, stating that based on the information provided, it has determined that the action will be undertaken in a manner that is consistent to the maximum extent practicable with the enforceable policies of the CNMI's coastal management program. Hawaii replied by letter dated February 15, 2019, stating that, because the overlap area is outside of the jurisdiction of the Hawaii Coastal Zone Management Program's enforceable policies, it would not be responding to the consistency determination. No responses were received from Guam or

American Samoa, and thus, concurrence with the respective consistency determinations is presumed (15 CFR 930.41).

Executive Order 12866

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

Executive Order 13771

This final rule is considered an Executive Order 13771 deregulatory action.

Regulatory Flexibility Act (RFA)

A final regulatory flexibility analysis (FRFA) was prepared as required by section 604 of the RFA. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) prepared for the proposed rule. The analysis in the IRFA is not repeated here in its entirety. A description of the action, why it is being considered, and the legal basis for this action are contained above in the **SUMMARY** section and this **SUPPLEMENTARY INFORMATION** section of the preamble of this final rule. The FRFA analysis follows:

Significant Issues Raised by Public Comments in Response to the IRFA

NMFS received one comment that responded specifically to the IRFA. Comment 3, above, objected to NMFS' conclusions regarding disproportionate economic impacts and compliance costs. Several other comments on the proposed rule related to NMFS' assessment of the economic effects of the proposed rule, and thus could be relevant to the IRFA. See the discussion above summarizing Comments 1, 2, 3, and 6 and NMFS's responses to those comments.

Description of Small Entities to Which the Rule Will Apply

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The final rule would apply to owners and operators of U.S. commercial fishing vessels used to fish for HMS in the overlap area, including longline vessels, albacore troll vessels, and purse seine vessels. The number of such vessels is the number authorized to fish in both the IATTC Area and WCPFC Area. The numbers as of January 27, 2020, as reflected on the IATTC RVR and the WCPFC Record of Fishing Vessels, were 144 longline vessels, 25 albacore troll vessels, and 15 purse seine vessels.

Based on limited financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all of the affected longline and albacore troll fishing entities, and almost 85 percent of the purse seine fishing entities, are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$11.0 million. Within the purse seine fleet, analysis of the average revenue, by vessel, for the three years of 2016-2018 (most recent data available) reveals that average annual revenue among vessels in the fleet was about \$9.0 million, and the 3-year annual averages were less than the \$11 million threshold for 12 of the 15 vessels on both the RVR and the WCPFC Record of Fishing Vessels.

Recordkeeping, Reporting, and Other Compliance Requirements

The reporting, recordkeeping and other compliance requirements of this final rule are described earlier in the preamble, as well as in the preamble to the proposed rule. The classes of small entities subject to the requirements and the expected costs of complying with the requirements are described in this Classification section of this final rule.

As described in the Paperwork Reduction Act (PRA) subsection below, this final rule contains a revised collection-of-information requirement subject to review and approval by OMB under the PRA.

Fulfillment of the requirements under the final rule is not expected to require any professional skills that affected vessel owners and operators do not already possess.

For longline fishing entities, although as previously described there are about 144 such entities that are authorized to be used for fishing in the overlap area, there has been very little fishing activity in the overlap area (and no longline fishing activity at all since 2010), and NMFS has not identified any factors affecting the longline fishing status quo. The overlap area is distant from the general areas of operation of the U.S. longline fisheries in the Pacific Ocean. Moreover, the longline bigeye tuna catch limit for the WCPFC area is 3,554 metric tons (mt) per year, while the longline bigeye tuna catch limit for the IATTC area through 2020 is 750 mt per year for vessel over 24 meters in overall length. Thus, at least for large vessels that are capable of making the trip to the overlap area, the change in management of the overlap area from WCPFC regulations to IATTC regulations is not expected to provide an increased incentive to fish in the overlap area. Consequently, NMFS expects the final rule to have little or no effect in terms of recordkeeping, reporting, or other compliance requirements for affected longline fishing entities.

For albacore troll fishing entities, NMFS does expect fishing activity in the overlap area, so affected troll fishing entities could experience effects from the final rule. Under the final rule, two substantive sets of requirements that implement conservation and management measures for fishing activity are newly applied to the overlap area: the regulations to implement IATTC conservation and management measures that restrict fishing in proximity to data buoys (50 CFR 300.25(f)), and the regulations to implement IATTC conservation and management measures prohibiting the retention of mobulid rays (with limited exceptions) and requiring that they be handled and released in specified manners (50 CFR 300.27(i)-(j)). The new data buoy requirements could increase operating costs by increasing the time spent at sea in the overlap area. For example, the vessel operator and crew would have to avoid interactions with data buoys, and if the vessel or gear becomes entangled with a data buoy they would need to make sure to disentangle the gear carefully, to cause as little damage to the data buoys as possible. As NMFS found in the analysis in support of the 2011 rulemaking establishing these requirements throughout the IATTC Area, NMFS expects interactions with data buoys to be rare (76 FR 68332; November 4, 2011). Moreover, data from the National Data Buoy Center (NDBC) indicates that only one anchored data buoy is located in the overlap area. Since interactions with data buoys would be unlikely to occur in the overlap area, the compliance costs are expected to be minor or nil. NMFS does not expect the mobulid ray requirements to lead to any compliance costs for albacore troll fishing vessels, because there is very little bycatch in albacore troll fisheries (81 FR 50401; August 1, 2016).

Some of the regulations implementing WCPFC conservation and management measures (at 50 CFR part 300, subpart O) no longer apply in the overlap area, but they

are replaced with comparable regulations implementing IATTC conservation and management measures (at 50 CFR part 300, subpart C) that now apply in this area. Specifically, the IATTC prohibition against retaining oceanic whitetip shark, implemented by 50 CFR 300.27(d), now applies in the overlap area. The requirements under the regulations implementing WCPFC conservation and management measures and IATTC conservation and management measures are similar, and NMFS does not expect any substantive change in compliance costs for albacore troll fishing entities. The regulations implementing WCPFC requirements for observer coverage for transshipments at sea, transshipping and bunkering, and for transshipment reporting for fish caught in the overlap area no longer apply in the overlap area. However, available information indicates that albacore troll vessels have not been transshipping in the WCPFC Area, including the overlap area, in recent years. There are also new requirements of a more administrative nature that apply in the overlap area for albacore troll fishing entities under regulations implementing IATTC conservation and management measures, including logbook reporting requirements (50 CFR 300.22(a)(1)), VMS requirements (50 CFR 300.26), and the prohibition on the use of tender vessels (50 CFR 300.25(b)). However, because the affected albacore troll fishing entities are already required to comply with these requirements when fishing in the IATTC Area, the application of these requirements in the overlap area would not require substantial changes in practices and would not be expected to bring any change in compliance costs.

For the purse seine fishing entities, the removal of several regulations that implement WCPFC conservation and management measures for fishing activity from the overlap area is expected to reduce compliance costs, but those reductions will be

somewhat offset by compliance costs associated with the imposition of similar regulations to implement IATTC conservation and management measures in the overlap area. The regulations that are removed from the overlap area under this final rule are the annual limits on purse seine fishing effort and the seasonal prohibitions on setting on FADs (50 CFR 300.223(b)), as well as the requirements to carry WCPFC observers on all fishing trips (50 CFR 300.223(e)). The IATTC-related regulations that are now applied in the overlap area are the seasonal closures on purse seine fishing and purse seine FAD restrictions (50 CFR 300.28), as well as the IATTC observer coverage requirements that have already been in effect (50 CFR 216.24(e)). Aside from the observer coverage requirements, the respective purse seine measures of IATTC and WCPFC are not directly comparable, and NMFS cannot predict their respective potential compliance costs with any precision. Accordingly, only a qualitative comparison of their respective compliance costs is possible. The measures as they apply on the high seas are what matter for this analysis, since no portion of the U.S. EEZ is within the overlap area, and no U.S. commercial HMS fishing vessels have had a history of fishing in the foreign EEZs in the overlap area. Under the final rule, U.S. purse seine fishing vessels are subject to one of the IATTC's two 72-day prohibitions on purse seine fishing (50 CFR 300.25(e)) in the overlap area each year. If instead the WCPFC measures continued to apply in the overlap area, U.S. purse seine fishing entities would be allowed, collectively, to spend 1,270 fishing days on the high seas in the WCPFC Area each year, with fishing days spent in the overlap area counting against that limit, and they would be subject to 5-month prohibitions on fishing on FADs in the overlap area each year (50 CFR 300.223). Although, the two sets of measures are not directly comparable, the IATTC measures

provide greater fishing opportunities to most or all affected purse seine fishing entities than those of WCPFC, because the IATTC purse seine closure period is shorter than the purse seine closures that have been in effect on the high seas in the WCPO due to the purse seine fishing effort limits specified by the WCPFC (in 2015, closure from June 15 through December 31, 2015; in 2016, closure from September 2 through December 31, 2016; in 2018, closure from September 18 through December 31, 2018; in 2019, closure from October 9 through November 28, 2019, and December 10 through December 31, 2019) or the WCPFC FAD prohibition periods. Further, the vessels operating under IATTC measures have greater operational certainty (affording logistical and maintenance predictability) because the vessel owner chooses between one of two closure periods rather than being subject to a variable closure date under WCPFC measures. It is not possible to predict the degree to which those opportunities would be taken advantage of, but the greater opportunities and flexibility they provide indicate that application of IATTC measures in the overlap area will likely reduce compliance costs for the directly affected purse seine fishing entities.

Purse seine fishing entities authorized to fish in the WCPFC Area but not in the overlap area (because they are on the WCPFC Record of Fishing Vessels but not on the IATTC RVR) would not be directly affected by the final rule, but they could be indirectly affected. The fishing effort limits set forth in WCPFC conservation and management measures no longer apply in the overlap area, allowing greater fishing effort in the overlap area. Additionally, under the final rule, fishing effort in the overlap area is not counted against WCPFC limits, potentially increasing fishing opportunities for the U.S. purse seine fleet outside the overlap area. This is based on trends in recent years showing

increased U.S. purse seine fishing activity in the overlap area. Since all of the fishing days in the overlap area no longer count towards the WCPFC-specified fishing effort limits, it is likely that more fishing days would be available to U.S. purse seine vessels on the high seas in the WCPFC Area outside of the overlap area.

The removal of the requirement for purse seine vessels to carry WCPFC observers on all fishing trips in the overlap area is expected to reduce compliance costs, as U.S. purse seine vessels no longer need to carry both a WCPFC observer and an IATTC observer or a cross-endorsed observer when fishing in the overlap area. As detailed in the comment summary and response section, above, obtaining a cross-endorsed observer or a WCPFC observer is costly and difficult for U.S. purse seine vessels departing from ports in the EPO, so this final rule will provide relief from that cost.

In addition to the changes to the purse seine-specific regulations just described, several substantive requirements apply to purse seine fishing entities in the overlap area under the final rule that did not previously apply in that area: the regulations implementing IATTC conservation and management measures on FADs (50 CFR 300.28), the Pacific bluefin tuna catch limit (50 CFR 300.25(g)), restrictions on fishing in proximity to data buoys (50 CFR 300.25(f)), requirements to release non-tuna and non-tuna-like species (50 CFR 300.27), requirements to release mobulid rays (with limited exceptions) and release them in specified manners (50 CFR 300.27(i)-(j)), and requirements to release sharks and handle them in specified manners (50 CFR 300.27(k)), as explained in more detail below.

The FAD management measures include FAD identification regulations that require that deployed FADs be physically marked with unique identifiers, as well as

limits on the number of active FADs, restrictions on FAD deployments and removals, and FAD design regulations, which require that all FADs on board or deployed meet certain specifications, particularly with respect to the use of netting. Although this final rule changes the area of application of the FAD management regulations at 50 CFR 300.28, all of the affected vessels are currently complying with those regulations when fishing in the EPO. Data from 2014-2018 show that all current U.S. purse seine vessels that fished in the overlap area also fished in the EPO. For affected entities, the change in area of application of the FAD management regulations probably will only bring a minor increase in costs or no increased costs, as they are already complying with those regulations when fishing in the EPO outside the overlap area. Moreover, there are comparable limits for the number of active FADs currently applicable in the overlap area under the regulations implementing WCPFC decisions at 50 CFR 300.223(b).

The Pacific bluefin tuna catch limits that will go into effect in the overlap area under the final rule are not expected to bring compliance costs to the large U.S. purse seine vessels that fish in the overlap area, as these vessels generally do not target or catch Pacific bluefin tuna.

The data buoy requirements could increase operating costs for purse seine vessels by increasing the time spent at sea for a given amount of fishing. For example, vessels now are not allowed to fish within 1 nautical mile of an anchored data buoy, they must avoid interactions with data buoys, and if the vessel or its gears becomes entangled with a data buoy, the operator and crew need to make sure to disentangle the gear carefully to cause as little damage to the data buoys as possible. As NMFS found in the 2011 rulemaking that established these requirements throughout the IATTC Area, NMFS

expects interactions with data buoys to be rare (76 FR 68332; November 4, 2011).

Moreover, there is a small number of data buoys located in the overlap area. Based on data from the NDBC, only one anchored data buoy is located in the overlap area. Thus, the compliance costs are expected to be minor.

The requirements to release non-tuna species and non-tuna-like species, mobulid rays, and sharks are not expected to substantially affect business revenues, because none of the affected fishing entities target non-tuna species and non-tuna-like species, sharks, or rays. However, the requirements could lead to increased time spent by vessel operators and crew handling and releasing incidentally caught non-tuna species and non-tuna-like species, sharks, and rays in the specified manner, and so could bring modest compliance costs. In addition, these requirements could detrimentally affect revenues if targeted tuna are incidentally released when these species are intentionally released from the brailer to comply with the regulations. However, affected U.S. purse seine vessel owners and operators are already subject to these requirements when fishing in the IATTC Area, and thus the small change in the area of application of these requirements is not expected to substantially increase compliance costs.

Some regulations implementing WCPFC conservation and management measures for bycatch (at 50 CFR part 300, subpart O) no longer apply in the overlap area.

However, comparable regulations that implement IATTC conservation and management measures for bycatch (at 50 CFR part 300, subpart C) now apply in the overlap area.

Regulations that have shifted in this manner include the requirements to retain all catch of bigeye tuna, skipjack tuna, and yellowfin tuna (50 CFR 300.27(a)), not to retain oceanic whitetip shark (50 CFR 300.27(d)), and not to retain silky shark (50 CFR 300.27(e));

requirements regarding sea turtle handling and release (50 CFR 300.27(c)); whale shark restrictions (50 CFR 300.27(g)-(h)); and whale shark encirclement reporting requirements (50 CFR 300.22(a)(2)). For these requirements, the two sets of regulations are similar, and NMFS does not expect any substantive change in compliance costs.

There are also six additional requirements for purse seine fishing entities under the regulations implementing IATTC conservation and management measures that are in effect under the final rule. These requirements include reporting on FAD interactions (50 CFR 300.22(a)(3)(i)), reporting on active FADs (50 CFR 300.22(a)(3)(ii)), logbook reporting requirements (50 CFR 300.22(a)(1)), the prohibition on the use of tender vessels (50 CFR 300.25(b)), transshipment requirements (50 CFR 300.25(c)), and VMS requirements (50 CFR 300.26). The first two requirements (reporting on FAD interactions and reporting on active FADs) bring substantive new requirements for fishing activities in the overlap area. Regarding the requirement for reporting on FAD interactions, as NMFS found in the 2016 rulemaking that established the requirement throughout the IATTC Area (excepting the overlap area), NMFS expects a minimal additional time burden for owners and operators of large purse seine vessels to record the specified information for FAD interactions activities, and expects minor impacts on business incomes (81 FR 86966; December 2, 2016). Regarding reporting on active FADs, as NMFS found in the 2018 rulemaking establishing the requirement throughout the IATTC Area (excepting the overlap area), NMFS does not expect any increase in compliance costs, because it is likely that vessel operators are already collecting the necessary information (83 FR 15503; April 11, 2018). The latter four requirements (prohibition on the use of tender vessels, logbook reporting requirements, transshipment

requirements, and VMS requirements) are not expected to bring any new compliance costs, because the affected purse seine fishing entities are currently subject to those regulations when fishing in the IATTC Area outside of the overlap area, and the addition of these regulations in the overlap area will not require substantial changes in practices. Moreover, the regulations implementing the IATTC prohibition on at-sea transshipments for purse seine vessels are essentially identical to regulations in effect in the overlap area implementing the WCPF Convention and WCPFC decisions. Similarly, the regulations implementing the IATTC VMS provisions are essentially identical to regulations in effect in the overlap area implementing the WCPF Convention and WCPFC decisions, but would just apply to a smaller group of vessels – vessels 24 meters or more in overall length. Given that the requirements implementing the WCPF Convention already apply and continue to apply under the final rule to vessels of all sizes, there will be no new VMS requirements under the proposed rule, and all U.S. commercial fishing vessels fishing for HMS in the overlap area are still required to continuously operate the VMS at all times, with certain exceptions.

Several other regulations implementing WCPFC conservation and management measures for U.S. purse seine vessels no longer apply in the overlap area under this final rule. These include the discard reporting requirements at 50 CFR 300.218(e); the transshipping, bunkering, and net sharing regulations at 50 CFR 300.216(b)(3) and 50 CFR 300.216(c); the net sharing reporting requirements at 50 CFR 300.218(f); and the daily purse seine fishing effort reports at 50 CFR 300.218(g). However, under regulations implementing the WCPF Convention and IATTC resolutions, U.S. purse seine vessels are prohibited from transshipping at sea, so the removal of the transshipping, bunkering, and

net sharing regulations will have little or no effect. Removal of the reporting requirements is expected to reduce some compliance costs.

Based on the comments received on the proposed rule, NMFS is now aware that several U.S. purse seine vessels that fish exclusively in the EPO will likely fish in the overlap area under this final rule. These vessels are already subject to all the regulations implementing IATTC resolutions that apply to the overlap area under this final rule when fishing in the EPO. However, these vessels will be subject to the regulations implementing WCPFC conservation and management measures that continue to apply in the overlap area. These regulations include the following: (1) vessel permit endorsements at 50 CFR 300.212; (2) vessel information requirements for fishing in foreign EEZs at 50 CFR 300.213; (3) compliance with laws of other nations at 50 CFR 300.214; (4) accommodating observers at 50 CFR 300.215(c)(3); (5) prohibition on transshipments to and from purse seine vessels at sea at 50 CFR 300.216(b)(1); (6) vessel identification requirements at 50 CFR 300.217; (7) reporting and recordkeeping requirements at 50 CFR 300.218(a); (8) VMS requirements at 50 CFR 300.219; and (9) facilitation of enforcement and inspection at 50 CFR 300.221. The regulations regarding the prohibition on transshipments to and from purse seine vessels at sea, vessel identification requirements, and VMS requirements are not expected to bring any new compliance costs, as U.S. purse seine vessels fishing in the EPO are already subject to similar or identical requirements, as discussed above. The regulations for accommodating WCPFC observers also are not expected to bring any new compliance costs, as they apply only when WCPFC observers are on board the vessel and U.S. purse seine vessels fishing exclusively in the EPO, including the overlap area, are not expected to be carrying

WCPFC observers. The requirements for complying with the laws of other nations also are not expected to bring any new compliance costs, as it is unlikely these purse seine vessels will fish in areas subject to the laws of other nations. Similarly, vessel information requirements for fishing in foreign EEZs at 50 CFR 300.213 would not be expected to bring any new compliance costs. Applying for and obtaining the WCPFC Area Endorsements will result in some minor compliance costs – the application fee for the five-year authorization is \$58 and the estimated time for completing the application is one hour. Submission of the vessel information for fishing in foreign EEZs is estimated to take 1.5 hours, so again, there will be some minor compliance costs associated with this requirement. The reporting and recordkeeping requirements also may bring some compliance costs, but these costs are not expected to be substantial. The fishing report requirements at 50 CFR 300.218(a) may be fulfilled by completion of the IATTC reporting requirements at 50 CFR 300.22. The requirements for facilitation of enforcement and inspection could bring some compliance costs, but these compliance costs are also unlikely to be substantial. Maintaining appropriate documentation on board the vessel, monitoring certain radio frequencies, and adhering to gear stowage requirements is not expected to lead to substantial compliance costs. Facilitating high seas boarding and inspections would only lead to compliance costs when they occur. WCPFC CMM 2006-08, “Western and Central Pacific Fisheries Commission Boarding and Inspection Procedures” details the specific procedures that inspection vessels must follow when conducting such boarding and inspections and requires inspections to be completed within four hours unless evidence of a serious violation is found. Thus, such high seas boarding and inspections, if they do occur, would not be expected to lead to

substantial compliance costs unless evidence of a serious violation is found; it is difficult to predict how often that would occur and what type of compliance costs would be incurred in such a situation. Overall, the compliance costs under this final rule for U.S. purse seine vessels fishing exclusively in the EPO are not expected to be substantial.

In summary, this final rule is expected to have little or no effect on the compliance costs of any affected entities, except purse seine fishing entities, for which a positive economic impact is expected. For purse seine fishing entities, this rule is likely to bring modest increases in compliance costs associated with several requirements that will go into effect in the overlap area. However, these costs will be counteracted by a potentially substantial reduction in compliance costs associated with removal of the regulations to implement WCPFC conservation and management measures for fishing effort limits and FAD prohibition periods from application in the overlap area, making the overall economic impacts positive.

Disproportionate Impacts

NMFS does not expect any disproportionate economic impacts between small and large entities operating vessels resulting from this rule. Furthermore, NMFS does not expect any disproportionate economic impacts based on vessel size, gear, or homeport. Comment 3, above, questioned NMFS' conclusions regarding disproportionate impacts in the proposed rule. The commenter stated its belief that vessels fishing solely in the IATTC Area, including the overlap area, would experience disproportionate impacts from the WCPFC purse seine observer coverage requirements set forth in 50 CFR 300.223(e). As stated above, the purse seine observer coverage requirements at 50 CFR 300.223(e) no longer apply under this final rule. Additionally, as stated above, the compliance costs

under this final rule for U.S. purse seine vessels fishing exclusively in the IATTC Area or EPO are not expected to be substantial.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that conflict with these regulations. NMFS has identified several Federal regulations that duplicate or overlap with the regulations. These include: the logbook reporting requirements at 50 CFR 300.22(a)(1), which overlap with existing regulations at 50 CFR 300.34(b)(1) and 300.218(a), the transshipment requirements at 50 CFR 300.25(c), which overlap with existing regulations at 50 CFR 300.216(b), the vessel identification requirements at 50 CFR 300.217, which overlap with requirements at 50 CFR 300.22(b)(3) and 50 CFR 300.336(b)(2), and the VMS regulations at 50 CFR 300.26, which overlap with existing regulations at 50 CFR 300.45 and 300.219. However, as described above, these regulations impose requirements which are substantially similar to, or in some cases identical to, requirements imposed under regulations currently applicable in the overlap area. Thus, application of these overlapping requirements is not expected to create significant economic burdens on vessel owners and operators.

Alternatives to the Final Rule

NMFS has sought to identify alternatives that would minimize the final rule's economic impacts on small entities ("significant alternatives"). For most affected entities, the final rule is likely to have no economic impact or a positive economic impact compared to the no-action alternative. NMFS also considered the alternative of removing application from the overlap area of all regulations derived from WCPFC conservation and management measures and from the WCPF Convention. This alternative would

likely result in lower compliance costs than this final rule for some affected entities, but NMFS believes maintaining the application of some of those regulations is necessary to fulfill U.S. obligations under the WCPF Convention, as detailed above. Therefore, NMFS rejected this alternative.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. NMFS has prepared small entity compliance guides for this rule, and will send the appropriate guides to holders of permits in the relevant fisheries. The guides and this final rule also will be available via the Federal e-rulemaking Portal, at www.regulations.gov (search for Docket ID NOAA-NMFS-2018-0049) and by request from NMFS PIRO (see **ADDRESSES**).

Paperwork Reduction Act

This final rule contains revised collection-of-information requirements subject to review and approval by OMB under the PRA. These requirements have been submitted to OMB for approval under Control Numbers 0648-0649 and 0648-0218 and pertain to the reporting and recordkeeping requirements that would no longer apply in the overlap area and would not affect the estimated public reporting burden of these collections. Other existing collection of information requirements apply in the overlap area, under the following Control Numbers: (1) 0648-0148, West Coast Region Pacific Tuna Fisheries

Logbook and Fish Aggregating Device Data Collection; (2) 0648–0595, WCPFC Vessel Information Family of Forms; and (3) 0648–0204, West Coast Region Family of Forms.

Send comments on these or any other aspects of the collection of information to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES**), and by email 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, 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.

List of Subjects in 50 CFR Part 300

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

Dated: May 28, 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 part 300 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 “Convention Area or IATTC

Convention Area” to read as follows:

§ 300.21 Definitions.

* * * * *

Convention Area or IATTC Convention Area means all waters of the Pacific Ocean within the area bounded by the west coast of the Americas and by 50° N. latitude from the coast of North America to its intersection with 150° W. longitude, then 150° W. longitude to its intersection with 50° S. latitude, and then 50° S. latitude to its intersection with the coast of South America.

* * * * *

Subpart O -- Western and Central Pacific Fisheries for Highly Migratory Species

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

Authority: 16 U.S.C. 6901 *et seq.*

4. In § 300.211, revise the definition of “Effort Limit Area for Purse Seine, or ELAPS” and add the definition of “Overlap Area” in alphabetical order to read as follows:

§ 300.211 Definitions.

* * * * *

Effort Limit Area for Purse Seine, or ELAPS, means, within the area between 20° N. latitude and 20° S. latitude, areas within the Convention Area that either are high seas or within the EEZ, except for the Overlap Area.

* * * * *

Overlap Area means the area within the Pacific Ocean bounded by 50° S. latitude, 4° S. latitude, 150° W. longitude, and 130° W. longitude.

* * * * *

5. In § 300.215, revise paragraphs (c)(1) and (2), (d)(1)(ii), and (d)(2)(v) to read as follows:

§ 300.215 Observers.

* * * * *

(c) * * * (1) Fishing vessels specified in paragraphs (a)(1) and (2) of this section must carry, when directed to do so by NMFS, a WCPFC observer on fishing trips during which the vessel at any time enters or is within any part of the Convention Area other than the Overlap Area. The operator and each member of the crew of the fishing vessel shall act in accordance with paragraphs (c)(3), (4), and (5) of this section with respect to any WCPFC observer.

(2) Fishing vessels specified in paragraph (a)(3) of this section must carry an observer when required to do so under paragraph (d) of this section, except for within the Overlap Area. The operator and each member of the crew of the fishing vessel shall act in accordance with paragraphs (c)(3), (4), and (5) of this section, as applicable, with respect to any WCPFC observer.

* * * * *

(d) * * *

(1) * * *

(ii) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or entirely within the Overlap Area, and only includes fish caught in such waters; or

* * * * *

(2) * * *

(v) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or entirely within the Overlap Area, and only includes fish caught in such waters; or

* * * * *

6. In § 300.216, revise paragraphs (b)(2) introductory text, (b)(3)(i)(D), (b)(3)(ii) introductory text, and (c)(1) introductory text to read as follows:

§ 300.216 Transshipping, bunkering and net sharing.

* * * * *

(b) * * *

(2) *Restrictions on at-sea transshipments.* If a transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or entirely within the Overlap Area, and only includes fish caught within such waters, this paragraph does not apply.

* * * * *

(3) * * *

(i) * * *

(D) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or entirely within the Overlap Area, and only includes fish caught within such waters.

(ii) *Bunkering, supplying and provisioning.* Only fishing vessels that are authorized to be used for fishing in the EEZ may engage in bunkering in the EEZ. A fishing vessel of the United States used for commercial fishing for HMS shall not be used to provide bunkering, to receive bunkering, or to exchange supplies or provisions with another vessel in the Convention Area, except for the Overlap Area, unless one or more of the following is satisfied:

* * * * *

(c) * * *

(1) The owner and operator of a fishing vessel of the United States shall not conduct net sharing in the Convention Area, except for within the Overlap Area, unless all of the following conditions are met:

* * * * *

7. In § 300.218:

- a. Revise paragraphs (c), (d)(1) introductory text, (d)(2) introductory text, and (e);
- b. Add introductory text to paragraph (f); and

c. Revise paragraphs (g) and (h).

The revisions and addition read as follows:

§ 300.218 Reporting and recordkeeping requirements.

* * * * *

(c) *Exceptions to transshipment reporting requirements.* Paragraph (b) of this section shall not apply to a transshipment that takes place entirely within the Overlap Area or within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters.

(d) * * *

(1) *High seas transshipments.* This section shall not apply to a transshipment that takes place entirely within the Overlap Area and only includes fish caught within such waters. The owner and operator of a fishing vessel of the United States used for commercial fishing that offloads or receives a transshipment of HMS on the high seas in the Convention Area or a transshipment of HMS caught in the Convention Area anywhere on the high seas and not subject to the requirements of paragraph (d)(2) of this section, must ensure that a notice is submitted to the Commission by fax or email at least 36 hours prior to the start of such transshipment at the address specified by the Pacific Islands Regional Administrator, and that a copy of that notice is submitted to NMFS at the address specified by the Pacific Islands Regional Administrator at least 36 hours prior to the start of the transshipment. The notice must be reported in the format provided by the Pacific Islands Regional Administrator and must contain the following information:

* * * * *

(2) *Emergency transshipments.* This section shall not apply to a transshipment that takes place entirely within the Overlap Area and only includes fish caught within such waters. The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS that offloads or receives a transshipment of HMS in the Convention Area or a transshipment of HMS caught in the Convention Area anywhere that is allowed under § 300.216(b)(4) but would otherwise be prohibited under the regulations in this subpart, must ensure that a notice is submitted by fax or email to the Commission at the address specified by the Pacific Islands Regional Administrator, and a copy is submitted to NMFS at the address specified by the Pacific Islands Regional Administrator within 12 hours of the completion of the transshipment. The notice must be reported in the format provided by the Pacific Islands Regional Administrator and must contain the following information:

* * * * *

(e) *Purse seine discard reports.* The owner and operator of any fishing vessel of the United States equipped with purse seine gear must ensure that a report of any at-sea discards of any bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*) caught in the Convention Area, except for within the Overlap Area, is completed, using a form that is available from the Pacific Islands Regional Administrator, and recording all the information specified on the form. The report must be submitted within 48 hours after any discard to the Commission by fax or email at the address specified by the Pacific Islands Regional Administrator. A copy of the report must be submitted to NMFS at the address specified by the Pacific Islands

Regional Administrator by fax or email within 48 hours after any such discard. A hard copy of the report must be provided to the observer on board the vessel, if any.

(f) *Net sharing reports.* This paragraph (f) does not apply to net sharing activity within the Overlap Area.

* * * * *

(g) *Daily purse seine fishing effort reports.* If directed by NMFS, the owner or operator of any fishing vessel of the United States equipped with purse seine gear must report to NMFS, for the period and in the format and manner directed by the Pacific Islands Regional Administrator, within 24 hours of the end of each day that the vessel is at sea in the Convention Area, except for within the Overlap Area, the activity of the vessel (*e.g.*, setting, transiting, searching), location and type of set, if a set was made during that day.

(h) *Whale shark encirclement reports.* The owner and operator of a fishing vessel of the United States used for commercial fishing in the Convention Area that encircles a whale shark (*Rhincodon typus*) with a purse seine in the Convention Area shall ensure that the incident is recorded by the end of the day on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator. This paragraph (h) does not apply in the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or in the Overlap Area.

8. In § 300.223, revise the introductory text to read as follows:

§ 300.223 Purse seine fishing restrictions.

None of the requirements of this section apply in the territorial seas or archipelagic waters of the United States or any other nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or within the Overlap Area. All dates used in this section are in Universal Coordinated Time, also known as UTC; for example: the year 2013 starts at 00:00 on January 1, 2013 UTC and ends at 24:00 on December 31, 2013 UTC; and July 1, 2013, begins at 00:00 UTC and ends at 24:00 UTC.

* * * * *

9. In § 300.224, add introductory text to read as follows:

§ 300.224 Longline fishing restrictions.

None of the requirements of this section apply in the Overlap Area.

* * * * *

10. In § 300.226, add introductory text to read as follows:

§ 300.226 Oceanic whitetip shark and silky shark.

None of the requirements of this section apply in the Overlap Area.

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