



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

**[Docket No. 201013-0269]**

**RIN 0648-BG66**

**International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Requirements to Safeguard Fishery Observers**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would establish requirements to safeguard fishery observers and would establish prior notification procedures for observer placement. NMFS seeks comments on this proposed rule issued under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act). This action is necessary to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

**DATES:** Comments on the proposed rule must be submitted in writing by *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on the proposed rule and the regulatory impact review (RIR) prepared for the proposed rule, identified by NOAA-NMFS-2020-0125, by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0125](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0125),
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

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

Copies of the RIR are available at [www.regulations.gov](http://www.regulations.gov) or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

**FOR FURTHER INFORMATION CONTACT:** Valerie Post, NMFS PIRO, 808-725-5034.

**SUPPLEMENTARY INFORMATION:**

**Background on the Convention**

The Convention focuses on the conservation and management of fisheries for highly migratory species (HMS). The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO. To accomplish this objective, the Convention established the Commission on the Conservation of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission), which includes Members, Cooperating Non-members, and Participating Territories (collectively referred to here as “members”). The United States of America is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States implements conservation and management measures and other decisions adopted by the Commission. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC

Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC Web site at: [www.wcpfc.int/doc/convention-area-map](http://www.wcpfc.int/doc/convention-area-map).

### **Background on Conservation and Management Measure (CMM) 2017-03**

CMM 2017-03, “Conservation and Management Measure for WCPFC Regional Programme Observers,” was adopted by the Commission to strengthen protections for observers on fishing trips operating under the WCPFC Regional Observer Programme (ROP). This proposed rule would implement provisions of CMM 2017-03. The CMM includes provisions that detail responsibilities for vessel owners and operators, responsibilities for WCPFC members to which fishing vessels are flagged, responsibilities for members that have jurisdiction over ports, and responsibilities for observer providers. These provisions include (1) provisions for when a WCPFC observer<sup>1</sup> dies, is missing or presumed to have fallen overboard; (2) provisions for when a WCPFC observer suffers from a serious illness or injury that threatens his or her health or safety; and (3) provisions for when there are reasonable grounds to believe a WCPFC observer

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<sup>1</sup> A WCPFC observer is a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission’s ROP, including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the Commission’s ROP (see 50 CFR 300.211).

has been assaulted, intimidated, threatened or harassed.

In the event that a WCPFC observer on a fishing vessel of the United States dies, is missing or presumed fallen overboard, CMM 2017-03 contains a number of requirements for an owner and operator of the fishing vessel to follow including: (1) immediately cease all fishing operations; (2) immediately commence search and rescue if the observer is missing or presumed fallen overboard; (3) immediately notify the flag state of the vessel; (4) immediately alert other vessels in the vicinity by using all available means of communication; (5) cooperate fully in any search and rescue operation; (6) return the vessel for further investigation to the nearest port whether the search is successful or not; (7) provide a report to the observer provider; (8) cooperate fully in any official investigations; and (9) ensure the body is well preserved if an observer dies.

In the event that a WCPFC observer on a fishing vessel of the United States suffers from a serious illness or injury that threatens his or her health or safety, CMM 2017-03 contains a number of requirements for an owner or operator to follow including: (1) immediately cease all fishing operations; (2) immediately notify the flag state of the vessel; (3) take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel; (4) facilitate the disembarkation of the observer; and (5) cooperate fully in any investigations into the cause of illness or injury.

In the event that there are reasonable grounds to believe a WCPFC observer on a fishing vessel of the United States has been assaulted, intimidated, threatened, or harassed, CMM 2017-03 contains a number of requirements for an owner and operator of

the fishing vessel to follow including: (1) immediately take action to preserve the safety of the observer and mitigate and resolve the situation on board; (2) notify the flag state of the vessel and observer provider; (3) facilitate the safe disembarkation where requested; and (4) cooperate fully into any investigations into the incident.

As stated above, CMM 2017-03 applies to WCPFC observers on fishing trips operating under the WCPFC ROP. Paragraph 2 of the CMM also notes that the measure shall not prejudice the rights of members to enforce their laws with respect to the safety of observers consistent with international law.

Under CMM 2017-03, members are to require vessel owners and operators to take specific actions in the event of death, injury, serious illness, or harassment of a WCPFC observer, or when a WCPFC observer is missing or presumed fallen overboard. The requirements relate to vessel operations, notifications to the U.S. government, search and rescue procedures, and investigations. Some of the U.S. obligations are satisfied by existing regulations. Specifically, the United States already requires U.S. vessel owners or operators to notify the U.S. Coast Guard for marine casualties, including the death, loss, or serious injury of an observer. The regulations set forth at 46 CFR 4 specify requirements for notifications, reporting, and investigations of marine casualties. Because these regulations already satisfy the provisions of CMM 2017-03 for cases of death, or serious injury of an observer, or when an observer is missing or presumed fallen overboard, NMFS would not promulgate additional regulations for these instances. Serious injury is defined at 46 CFR 4.05-1 (6) as an injury that requires professional medical treatment (treatment beyond first aid).

This proposed rule would implement the provisions of CMM 2017-03 for cases of

serious illness, assault, intimidation, threats, interference, or harassment of a WCPFC observer.

### **Background on the Observer Notification Scheme**

The proposed rule would also implement specific prior notification procedures related to WCPFC observers that vessel owners and operators of U.S. vessels fishing for HMS in the Convention Area would need to follow.

Currently, U.S. commercial vessels fishing for HMS in the Convention Area provide prior notification only to obtain WCPFC observers for fishing trips when transshipments will be conducted at sea in the Convention Area (see 50 CFR 300.215(b)). Notifications must be provided at least 72 hours (exclusive of weekends and Federal holidays) before the vessel leaves port on the fishing trip and must include specific information. This requirement does not apply to U.S. purse seine vessels; U.S. purse seine vessels are prohibited from conducting at-sea transshipments (see 50 CFR 300.216(b)). However, U.S. purse seine vessels are required to carry WCPFC observers on all fishing trips within the Convention Area, unless the fishing trip takes place exclusively in the jurisdiction of a single nation other than the United States or unless no fishing occurs between 20° N. latitude and 20° S. latitude (50 CFR 300.223(e)).

Pursuant to the South Pacific Tuna Treaty (SPTT) and through a separate contractual agreement between the American Tunaboat Association and the Pacific Islands Forum Fisheries Agency (FFA), U.S. purse seine vessels carry observers deployed by the FFA Observer Program. FFA observers are authorized WCPFC observers, are nationals of Pacific island countries, and are at present the only observers placed on U.S. purse seine vessels operating in the Convention Area. Currently, NMFS

coordinates with FFA and places WCPFC observers on U.S. purse seine vessels departing from American Samoa. NMFS also collects information required for nominating WCPFC and Inter-American Tropical Tuna Commission (IATTC) cross-endorsed observers<sup>2</sup> for U.S. purse seine vessels intending to operate in both RFMOs on a single trip.

After reviewing the current administrative process regarding FFA observer placements on U.S. purse seine vessels under the WCPFC and SPTT, NMFS believes that prior notification by U.S. purse seine vessel owners and operators of their request for a WCPFC observer is needed to facilitate observer placement for trips departing from American Samoa. NMFS believes that a request for a WCPFC observer, including cross-endorsed observers, for a U.S. purse seine vessel departing from American Samoa should provide sufficient time for NMFS to complete the necessary administrative tasks, including coordinating international logistics for FFA observers traveling from other Pacific islands to American Samoa. NMFS proposes such observer requests be made at least five business days prior to the expected departure date from American Samoa.

Although the U.S. purse seine fleet is the only U.S. fleet that uses cross-endorsed observers, other fleets, such as the U.S. longline or albacore troll fleets that also operate in the Convention Area and the IATTC's area of competence (IATTC Area), could request the placement of a cross-endorsed observer for trips that take place in both the Convention Area and the IATTC Area in the future. To date, no requests for cross-endorsed observers have been received from U.S. longline or albacore troll vessels. NMFS believes that notification requesting cross-endorsed observers for vessels of all

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<sup>2</sup> 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.



gear types commercially fishing for HMS would aid in efficient placement of cross-endorsed observers as it would allow time for NMFS to complete the appropriate administrative steps, and notify the Secretariats for the WCPFC and IATTC of the placement prior to departure. As previously discussed in the context of purse seine vessels, NMFS believes that receiving notice of the need for a cross-endorsed observer for vessels of all gear types at least five business days prior to the expected departure date of the vessel on a fishing trip would be appropriate, as travel arrangements may need to be made if a cross-endorsed observer is not located at the port of departure.

### **Proposed Action**

The specific elements of the proposed rule are detailed below.

#### *1. Observer Safety Requirements*

This proposed rule would implement specific requirements for vessel owners and operators to help ensure the safety of WCPFC observers. CMM 2017-03 describes requirements for vessel owners and operators specifically related to vessel operations, notification, search and rescue procedures, and investigations in the event of death, injury, serious illness, missing overboard, or harassment of a WCPFC observer.

NMFS is not proposing additional regulations in the event of death, loss or serious injury as they would be duplicative of U.S. Coast Guard regulations on marine casualty incidents at 46 CFR 4.

Under the proposed rule, vessel owners and operators would be required to notify the designated authorities as specified by the Regional Administrator at <https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/western-and-central-pacific-longline-and-purse-seine-vessels> in the event of serious illness, assault,

intimidation, threats, interference, or harassment of a WCPFC observer. NMFS plans to create a website that would provide specific contact information of the designated authorities, including emails and phone numbers. At this time, NMFS has identified the observer provider and NOAA Office of Law Enforcement Pacific Islands Division Duty Officer as contacts in the event of serious assault, intimidation, threats, interference or harassment of a WCPFC observer, and the NOAA Office of Law Enforcement in the event of serious illness. Any changes or updates to these contacts will be posted on the website. Owners and operators would be required to immediately notify the contacts of the situation and the status and location of the observer.

NMFS notes that the nearest U.S. Coast Guard office would be the point of contact for emergency situations that would necessitate an immediate U.S. Coast Guard search and rescue, or law enforcement response. NMFS does not maintain a 24-hour hotline to handle such emergencies. Thus, in emergency situations that need an immediate response, vessel owners and operators are encouraged to contact the nearest U.S. Coast Guard Rescue Coordination Center (RCC) that can help coordinate with the closest Search and Rescue (SAR) facility in the area of the vessel:

*<https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Response-Policy-CG-5R/Office-of-Incident-Management-Preparedness-CG-5RI/US-Coast-Guard-Office-of-Search-and-Rescue-CG-SAR/RCC-Numbers/>*

In addition, under the proposed rule, the vessel owner or operator would be required to follow certain procedures in the event of serious illness, assault, intimidation, threats, interference or harassment of a WCPFC observer. The rule would require that, in these cases, the owner or operator of the fishing vessel must: (1) immediately cease

fishing operations; (2) take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel; (3) where directed by the observer provider, if not already directed by the appropriate U.S. government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and (4) cooperate fully in any official investigations into the cause of the illness. The proposed rule would specify that the owner or operator of the fishing vessel must “immediately cease fishing operations.” NMFS anticipates that there may be circumstances where “immediately cease” could allow for gear to be retrieved and NMFS does not encourage abandoning fishing gear. Although a vessel is required to immediately cease fishing operations, this rule would not prohibit reasonable steps to recover gear and catch, if appropriate under the circumstances.

## *2. Prior notification procedures for vessels requiring a WCPFC observer*

For placement of WCPFC observers on U.S. purse seine vessels when departing from American Samoa and for placement of cross-endorsed observers on U.S. purse seine vessels when requested, NMFS proposes requiring U.S. purse seine vessel owners and operators to submit such requests at least five business days before expected departure. The WCPFC observer request would need to provide the name of the vessel, name of the operator of the vessel, telephone number or email at which the owner or operator may be contacted, intended departure date, intended port of departure, and whether the owner or operator requests a WCPFC-IATTC cross-endorsed observer. NMFS also proposes requiring all other U.S. commercial fishing vessels fishing for HMS in the Convention Area to submit WCPFC-IATTC cross-endorsed observer requests at least five business

days before departure. The request would need to provide the name of the vessel, name of the operator of the vessel, a telephone number or email at which the owner or operator may be contacted, expected departure date, intended port of departure and identify the need for a WCPFC-IATTC cross-endorsed observer.

### **Classification**

The Administrator, Pacific Islands Region, NMFS, has determined that this proposed rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

### *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 CNMI, Guam, and the State of Hawaii. NMFS submitted determinations to Hawaii and each of the Territories on March 16, 2020, for review by the responsible state and territorial agencies under section 307 of the CZMA. Hawaii replied by letter dated March 19, 2020, stating that, because the proposed rule is outside of the jurisdiction of the Hawaii Coastal Zone Management Program's enforceable policies, it would not be responding to the consistency determination. The CNMI replied by letter dated May 12, 2020, 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. Guam replied by letter dated May 27, 2020, stating that based on the information provided, it has determined that the action will be consistent with the enforceable policies of Guam's Coastal Management Program. No response was received from American Samoa, and

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

*Executive Order 12866*

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

*Regulatory Flexibility Act (RFA)*

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of the preamble. The analysis follows:

**Estimated Number of Small Entities Affected**

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 proposed rule would apply to owners and operators of U.S. commercial fishing vessels that fish for HMS in the Convention Area that: (1) carry a WCPFC Observer or (2) purse seine for HMS in the Convention Area. This includes vessels in the

purse seine, longline, and albacore troll fleets. The estimated number of affected fishing vessels is as follows based on the number of vessels on the WCPFC Record of Fishing Vessels as of March 25, 2020: 26 purse seine vessels, 168 longline vessels, and 12 albacore troll vessels. Thus, the total estimated number of commercial fishing vessels that would be subject to the rule is 206. The purse seine vessels operating in the Convention Area generally land in American Samoa and other ports in Pacific Islands, the longline vessels operating in the Convention Area generally land in American Samoa and Hawaii, and the albacore troll vessels operating in the Convention Area generally land their catch in California, Oregon, Washington or Canada.

Based on (limited) financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses in all the fleets, except the purse seine fleet, 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 average revenue, by vessel, for 2017-2019 reveals that average fleet revenue was \$8,890,000 (NMFS unpublished data combined with price data from <https://www.ffa.int/node/425> and <https://www.wcpfc.int/node/46580> accessed on July 27, 2020); however, 17 participating vessels qualified as small entities with their average of the most recent three years of vessel revenue for which data is available of less than \$11 million. Within the Hawaii based longline fleet, an average of 146 vessels recorded landings during 2017-2019 with a average vessel revenue of approximately \$828,000 per vessel (estimate calculated using data from the 2019 Pelagic Fishery Ecosystem Plan Stock Assessment and Fishery

Evaluation Report and Annual Reports of the Hawaii Longline Fishery). For the American Samoa based longline fleet, an average of 15 vessels recorded landings during 2017-2019 with average vessel revenue of approximately \$339,000 per vessel (estimate calculated using data from the 2019 Pelagic Fishery Ecosystem Plan Stock Assessment and Fishery Evaluation Report and Annual Reports of the American Samoa Longline Fishery). None of the other potentially directly regulated fishing sectors had total fishery revenue of all vessels combined that exceeded the small entity threshold.

### **Recordkeeping, Reporting, and Other Compliance Requirements**

The reporting, recordkeeping and other compliance requirements of this proposed rule are described earlier in the preamble. The classes of small entities subject to the requirements and the types of professional skills necessary to fulfill the requirements are as follows:

(1) *Reporting requirements when carrying a WCPFC observer*: This requirement is part of a proposed collection of information subject to approval by the Office of Management and Budget (OMB) under the PRA. It would apply to about 199 small business entities, (derived from subtracting the seven vessels that do not qualify as small business entities from 206, the number of fishing vessels affected by this rule as estimated from vessels with WCPFC area endorsements). Complying would require that owners and operators of purse seine, longline and troll vessels to contact NMFS in the event of serious illness, assault, intimidation, threats, interference, or harassment of a WCPFC observer. NMFS estimates the cost of compliance as the cost of a five minute phone call though the cost of compliance could vary depending on the directions given by NMFS. NMFS cannot project how many calls would occur, but from 2015-2019, NOAA

Office of Law Enforcement charged a total of six cases of harassment against purse seine and longline vessels in the Pacific Islands Region. Thus, NMFS expects events of serious illness, assault, intimidation, threats, interference, or harassment of a WCPFC observer to occur very rarely (average of one per year) and thus the cost of reporting to be very small. The Commission has indefinitely deferred implementation of placing WCPFC observers on troll vessels, and for the foreseeable future, NMFS does not believe that this requirement would add any new compliance costs for troll vessels. If the Commission were to change its position on placing WCPFC observers on troll vessels, troll operators may incur compliance costs similar to those described above. Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(2) *Requirement to ensure observer safety*: This requirement is outside of the proposed collection of information under the PRA. In the event of serious illness, assault, intimidation, threats, interference or harassment of a WCPFC observer, the proposed rule would require the owner or operator of the fishing vessel to: (1) immediately cease fishing operations; (2) take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel; (3) where directed by the observer provider, if not already directed by the appropriate U.S. government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and (4) cooperate fully in any official investigations into the cause of the illness. NMFS cannot project how often this would occur, but anticipates these events to occur rarely. As mentioned above, NOAA Office of Law Enforcement has charged six cases of harassment against purse seine and longline



vessels over 2015-2019 in the Pacific Islands Region, which equates to approximately one per year. If such an event does occur, the impacts could vary depending on when the event occurs and what foregone opportunity is lost. For illustrative purposes, the average gross revenue of a U.S. purse seine fishing trip from 2017-2019 was a little under \$1.4 million per trip (calculated by multiplying Bangkok fish prices by average catch per trip using NMFS data) so if an event occurred near the start of a fishing trip, the vessel could potentially forgo much of that revenue along with any trip costs already incurred. For U.S. longline vessels the average gross revenue from 2017-2019 (calculated using nominal revenue and trip information from the 2019 Pelagic Fishery Ecosystem Plan Stock Assessment and Fishery Evaluation Report) was around \$664,000 per Hawaii-based deep-set trip, \$64,000 per Hawaii-based shallow-set trip, and \$39,000 per American Samoa-based trip so if an event occurred near the start of a fishing trip, the vessel could potentially forgo much of that revenue along with any trip costs already incurred.

(3) *Notification requesting a WCPFC Observer*: This requirement is part of a proposed collection of information subject to approval by OMB under the PRA. It would apply to about 199 small business entities. Vessels are already required to provide notification prior to trip departure if they intend to transship at sea, and this proposed requirement would expand notification requirements to all vessels requesting a WCPFC-IATTC cross-endorsed observer and to purse seine vessels requesting a WCPFC observer and departing from American Samoa. Longline vessels are already required to notify NMFS at least 72 hours before departure on a fishing trip, and this requirement would not add any new compliance costs for those vessels. The additional 48 hours advanced notice

might reduce operational flexibility for longline vessels, but to date, there have been no requests from longliners for WCPFC-IATTC cross-endorsed observers, so this would be expected to occur very rarely if at all. The WCPFC has indefinitely deferred implementation of placing ROP observers on troll vessels, and for the foreseeable future, NMFS does not believe that this requirement would add any new compliance costs for troll vessels. If the WCPFC were to change its position on placing ROP observers on troll vessels, troll operators may incur minor compliance costs similar to those outlined below for purse seine vessels.

The proposed requirement may result in compliance costs for vessels requesting a WCPFC-IATTC cross-endorsed observer. It is estimated that each pre-trip notification would require 1 minute of labor and about \$1 in communication costs. The value of the required labor is estimated to be \$24.42 per hour. The estimated cost of compliance is less than \$2 per notification. The number of pre-trip notifications for a cross-endorsed observer cannot be predicted with any certainty, but for the purpose of this analysis, each vessel is expected to make 0.23 pre-trip notifications per year requesting a WCPFC-IATTC cross-endorsed observer (estimate based on the average number of WCPFC-IATTC notifications NMFS made in 2018-2019 divided by 221, the number of potential respondents including (1) 40 purse seine vessels, which is the maximum number of licenses available under the South Pacific Tuna Treaty; (2) 164 longline vessels, which is the maximum number of Hawaii longline limited entry permits available; and (3) 17 troll vessels, which is the maximum number of West Coast-based albacore vessels that fished in the Convention Area in any one year from 2016-2019). The estimated cost of compliance for all vessels is expected to be \$70.35 for 50 pre-trip notifications requesting

a WCPFC-IATTC cross-endorsed observer per year.

The proposed requirement may also result in compliance costs for purse seine vessels requesting a WCPFC observer when departing from American Samoa. It is estimated that each notification would require 1 minute of labor and about \$1 in communication costs. The value of the required labor is estimated to be \$24.42 per hour. The estimated cost of compliance is less than \$2 per notification. The number of requests and notifications cannot be predicted with any certainty, but for the purpose of this analysis, each purse seine vessel is expected to make 2.34 requests or notifications per year related to WCPFC observers (estimate based on the average number of trips per year from 2014-2018 divided by 40, the number of potential respondents). The estimated cost of compliance is therefore expected to be \$3.29 for a vessel that makes 2.34 pre-trip notifications per year.

### **Duplicating, Overlapping, and Conflicting Federal Regulations**

NMFS has identified Federal regulations that could overlap with the proposed rule for each of its two elements:

*(1) Observer Safety*

As mentioned above, the U.S. Coast Guard has regulations at 46 CFR part 4 relating to marine casualties. This proposed regulation would implement the requirements of CMM 2017-03 that are not marine casualties covered by the existing U.S. Coast Guard regulations.

IATTC adopted Resolution C 18-07 on Observer Safety, and NMFS published a final rule on May 18, 2020 (85 FR 29666) related to observer safety notification for observers on vessels that are on fishing trips in the IATTC Area. The regulations in the

proposed rule and the regulations applicable to the IATTC Area would apply to WCPFC observers that are on vessels that are fishing in the IATTC Area, such as WCPFC observers that are also cross-endorsed observers. In this case, there would be overlapping regulations, but NMFS intends to ensure consistency in the contacts for the observer safety notification such that both requirements would be satisfied with one notification.

*(2) Notification to Request Observer*

Vessels with a Hawaii or American Samoa longline limited access permit are required at 50 CFR 665.803 to notify NMFS at least 72 hours (excluding weekends and Federal holidays) before the vessel leaves port on a fishing trip wherein any part occurs in the U.S. exclusive economic zone around the Hawaiian Archipelago or American Samoa. Purse seine vessels operating in the Eastern Pacific Ocean are also required at 50 CFR 216.24 to notify NMFS or the IATTC contact designated by NMFS at least five days before the vessel leaves port for observer placement reasons. This regulation potentially overlaps with the proposed regulation for those trips that include a request for placement of a cross-endorsed observer.

**Alternatives to the Proposed Rule**

NMFS has not been able to identify any alternatives that would minimize any significant economic impact of the proposed rule on small entities. The alternative of taking no action at all was rejected because it would be inconsistent with the United States' obligations under the Convention. As a Contracting Party to the Convention, the United States is required to implement the decisions of the WCPFC. Consequently, NMFS has limited discretion as to how to implement those decisions.

*Paperwork Reduction Act*

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule revises the existing requirements for the collection of information 0648-0649, “Transshipment Requirements Under the WCPFC” by requiring reporting in the event of serious illness, assault, intimidation, threats, interference, or harassment of a WCPFC observer on purse seine vessels and troll vessels as well as requiring pre-trip notifications for purse seine vessels requesting a purse seine observer and departing from American Samoa, and requiring pre-trip notifications for vessels requesting a WCPFC-IATTC cross endorsed observer. Notifications related to observer safety on purse seine vessels and troll vessels are expected to be rare, and the public burden is estimated to average five minutes per reporting incident. NMFS estimates that the public reporting burden would be one minute for pre-trip notifications for purse seine vessels requesting a WCPFC observer and departing from American Samoa and one minute for pre-trip notifications for vessel requesting a WCPFC-IATTC cross endorsed observer.

NMFS is also revising the existing requirements for the collection of information 0648-0214, “Pacific Islands Region Logbook Family of Forms” by requiring reporting in the event of serious illness, assault, intimidation, threats, interference, or harassment of a WCPFC observer on longline vessels. Notifications related to observer safety on longline vessels are expected to be rare, and the public burden is estimated to average five minutes per reporting incident.

NMFS requests any comments on the PRA requirements under this proposed rule, including whether the paperwork would unnecessarily burden any vessel owners and

operators. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the **ADDRESSES** above, and by e-mail to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at:

[http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

### **List of Subjects in 50 CFR Part 300**

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

Dated: October 14, 2020.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species**

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

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

2. In § 300.211, add a definition for “WCPFC-IATTC cross-endorsed observer” in alphabetical order to read as follows:

**§ 300.211 Definitions.**

\* \* \* \* \*

*WCPFC-IATTC cross-endorsed observer* means an observer who is “cross endorsed” pursuant to a Memorandum of Cooperation between the Commission and the Inter-American Tropical Tuna Commission that specifies a process to allow the observer to meet the observer requirements of both organizations.

\* \* \* \* \*

3. In § 300.215, revise paragraph (b) and add paragraph (f) to read as follows:

**§ 300.215 Observers.**

\* \* \* \* \*

(b) *Notifications.* (1) If a fishing vessel of the United States used for commercial fishing for HMS in the Convention Area intends to conduct transshipments at sea, the owner or operator of that fishing vessel is required to carry a WCPFC observer under paragraph (d) of this section during the fishing trip and shall notify the Pacific Islands

Regional Administrator of the need for a WCPFC observer at least 72 hours (exclusive of weekends and Federal holidays) before the vessel leaves port on the fishing trip. The notice shall be provided to the Observer Placement Contact specified by the Pacific Islands Regional Administrator and must include the official number of the vessel, the name of the vessel, the expected departure date, time, and location, the name of the operator of the vessel, and a telephone number at which the owner, operator, or a designated agent may be contacted during the business day (8 a.m. to 5 p.m. Hawaii Standard Time). If applicable, this notice may be provided in conjunction with the notice required under § 665.803(a) of this title.

(2) In order to obtain a WCPFC-IATTC cross-endorsed observer for a particular fishing trip, the owner or operator of a fishing vessel of the United States that is used for commercial fishing for HMS in the Convention Area shall provide the Pacific Islands Regional Administrator with the following information at least five days (exclusive of weekends and Federal holidays) before the vessel leaves port on the fishing trip: the name of the vessel; name of the operator of the vessel; a telephone number or email at which the owner or operator may be contacted; expected departure date; intended port of departure; and that the owner or operator requests a WCPFC-IATTC cross-endorsed observer. This information shall be provided to the address specified by the Pacific Islands Regional Administrator and may be provided in conjunction with the notice required under § 216.24(b)(8)(iv)(A) of this title, if applicable.

(3) In order to obtain a WCPFC observer on a fishing trip departing from American Samoa, the owner or operator of a fishing vessel of the United States equipped with purse seine gear shall provide the Pacific Islands Regional Administrator with the



following information at least five days (exclusive of weekends and Federal holidays) before the vessel leaves port on the fishing trip: the name of the vessel; name of the operator of the vessel a telephone number or email at which the owner or operator may be contacted expected departure date; intended port of departure and; whether the owner or operator requests a WCPFC-IATTC cross-endorsed observer. This information shall be provided to the address specified by the Pacific Islands Regional Administrator and may be provided in conjunction with the information required under § 300.215(b)(2) of this title.

\* \* \* \* \*

(f) *Observer safety.* The following requirements apply when a WCPFC observer is on a fishing trip operating under the Commission's Regional Observer Program.

(1) The owner or operator of a fishing vessel of the United States shall immediately report the serious illness that threatens the health or safety of a WCPFC observer to the U.S government contact on the list provided by the Pacific Islands Regional Administrator at <https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/western-and-central-pacific-longline-and-purse-seine-vessels>. In addition, the owner or operator of the fishing vessel must:

(i) Immediately cease fishing operations;

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

(iii) Where directed by the observer provider, if not already directed by the appropriate U.S. government contact, facilitate the disembarkation and transport of the

observer to a medical facility equipped to provide the required care, as soon as practicable; and

(iv) Cooperate fully in any official investigations into the cause of the illness.

(2) In the event that a WCPFC observer on a fishing vessel of the United States has been assaulted, intimidated, threatened or harassed, the owner or operator of the fishing vessel shall immediately notify the U.S. government contact and observer program contact on the list provided by the Pacific Islands Regional Administrator at <https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/western-and-central-pacific-longline-and-purse-seine-vessels> of the situation and the status and location of the observer. In addition, the owner or operator of the fishing vessel must:

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

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

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

4. In § 300.222, add paragraph (yy) to read as follows:

**§ 300.222 Prohibitions.**

\* \* \* \* \*

(yy) Fail to comply with the observer safety requirements in § 300.215(f).