



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 210112-0008]

RIN 0648-BK08

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for Tropical Tuna in the Eastern Pacific Ocean for 2021

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act to implement Resolution C-20-05 (*Conservation of Tuna in the Eastern Pacific Ocean During 2021*), which was adopted by the Inter-American Tropical Tuna Commission (IATTC or Commission) on December 22, 2020. All of the provisions of Resolution C-20-05 are identical in content to the previous resolution on tropical tuna management that expired at the end of 2020. This interim final rule implements the C-20-05 fishing management measures for tropical tuna (*i.e.*, bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*)) in the eastern Pacific Ocean (EPO). The fishing restrictions in this interim final rule are applicable in 2021 only and apply to purse seine vessels of class sizes 4-6 (carrying capacity of 182 metric tons (mt) or greater) and longline vessels greater than 24 meters (m) in overall length that fish for tropical tuna in the EPO. This interim final rule is necessary for the conservation of tropical tuna stocks in the EPO and for the United States to satisfy its obligations as a member of the IATTC.

DATES: This interim final rule is effective [*INSERT DATE OF PUBLICATION IN FEDERAL REGISTER*]. Comments on the interim final rule must be submitted in writing by [*INSERT 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0122, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0122>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rachael Wadsworth, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2020-0122” in the comments.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

ADDRESSES: Copies of supporting documents that were prepared for this interim final rule, including the regulatory impact review (RIR) are available via the Federal e-Rulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2020-0122, or contact Rachael Wadsworth, NMFS WCR SFD, NMFS West Coast Region Long Beach

Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802, or

WCR.HMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Rachael Wadsworth, NMFS, at (206) 561-3457.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. In 2003, the IATTC adopted the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The Antigua Convention entered into force in 2010. The United States acceded to the Antigua Convention on February 24, 2016. The full text of the Antigua Convention is available at:

<https://www.iattc.org/PDFFiles/IATTC->

[Instruments/_English/IATTC_Antigua_Convention%20Jun%202003.pdf](https://www.iattc.org/PDFFiles/IATTC-).

The IATTC consists of 21 member nations and 5 cooperating non-member nations and facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, sharks, and billfish stocks in the IATTC Convention Area to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

International Obligations of the United States under the Antigua Convention

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951 *et seq.*) directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

IATTC Resolution on Tropical Tuna Conservation

On November 30-December 4, 2020, the IATTC met virtually for the 95th IATTC meeting and was unable to reach consensus on management measures for tropical tuna in the EPO, which is unusual. This meeting, which is typically held in person during the summer months, had been delayed due to travel restrictions. The failure of the Commission to reach consensus at its meeting created an urgent situation because the tropical tuna management measures were set to expire at the end of the 2020 calendar year, and no measures would have been in place for the start of the 2021 fishing season. The IATTC ultimately adopted Resolution C-20-05 (*Resolution on Conservation and Management Measures of Tropical Tunas in 2021*) by consensus at its 96th Extraordinary Meeting on December 22, 2020.

Applicable to 2021 only, the provisions of Resolution C-20-05 are identical in content to those contained in the previous IATTC Resolution (C-17-02; *Multiannual Program for the Conservation of Tuna in the Eastern Pacific Ocean During 2018-2020*) on tropical tuna management that were in place from 2018-2020. The provisions include a 72-day fishing closure period for purse seiners, provisions for exemptions from that closure period due to force majeure, a time/area closure in the EPO for 31 days for purse seiners, catch limits of bigeye tuna caught in the EPO for longline vessels greater than 24

m in overall length, catch limit transfer requirements for bigeye tuna, a requirement that all tropical tuna be retained and landed (with some exceptions), and restrictions on the use and design of fish aggregating devices (FADs).

As described further under the **Classification** section, due to the unforeseen circumstances of the delayed IATTC meeting, the late-adoption of Resolution C-20-05, and given that NMFS must implement regulations quickly to ensure conservation of tropical tuna stocks in the EPO and to comply with its international obligations, NMFS is implementing these regulations through an interim final rule without providing the public with advance notice in a proposed rule or the opportunity for comment. This interim final rule will be effective immediately upon publication. NMFS will, however, accept and consider public comments submitted on this interim final rule.

Final Regulations – Tuna Conservation Measures for 2021

This interim final rule is implemented under the Tuna Conventions Act of 1950 (16 U.S.C. 951 *et seq.*), as amended on November 5, 2015, by title II of Public Law 114-81. This interim final rule implements the provisions of Resolution C-20-05 and applies to U.S. commercial fishing vessels using purse seine and longline gear to catch tropical tuna in the IATTC Convention Area. Resolution C-20-05 continues for 2021 provisions that were included in the previous IATTC Resolution C-17-02 that were applicable to 2018-2020. Those provisions were implemented into regulation in a final rule published on April 11, 2018 (83 FR 15503). This interim final rule continues those regulations for 2021.

First, this rule maintains a 750 mt catch limit on bigeye tuna caught by longline vessels greater than 24 m in overall length in the IATTC Convention Area (50 CFR 300.25(a)(2)). Second, the rule maintains the prohibition on purse seine vessels of class size 4 to 6 (*i.e.*, vessels with a carrying capacity greater than 182 mt) from fishing for tropical tuna in the IATTC Convention Area for a period of 72 days (50 CFR

300.25(e)(1)). Specifically, vessels will continue to be prohibited from fishing in the EPO for 72 days during one of the following two periods: (1) from July 29 to October 8; or (2) from November 9 to January 19 of the following year (50 CFR 300.25(e)(1)(i) and (ii)). Third, the rule maintains a closure period (*i.e.*, Corralito closure) for the purse seine fishery for tropical tuna within the area of 96° and 110° W and between 4° N and 3° S from 0000 hours on October 9, 2021, to 2400 hours on November 8, 2021 (50 CFR 300.25(e)(5)). The three regulations described in this paragraph are amended by this interim final rule solely to specify that they apply in calendar year 2021.

This interim final rule also continues for 2021 several other regulations that were applicable in 2018-2020 but that do not need to be amended by this rulemaking because their regulatory text does not specify the calendar years to which they apply. Therefore, this interim final rule continues the effectiveness of those regulations in 2021 without amendment. Those regulations are included below:

- Provisions related to transferring longline catch limits for bigeye tuna between IATTC members (50 CFR 300.25(a)(5)).
- Provisions related to selection of a 72-day closure period (50 CFR 300.25(e)(2) and (3)).
- Provisions related to exemptions from the 72-day closure period requirement due to force majeure (50 CFR 300.25(e)(4)).
- Requirements related to stowing gear during time/area closure periods (50 CFR 300.25(e)(6)).
- A requirement for all tropical tuna to be retained on board and landed (with certain exceptions) (50 CFR 300.27(a)).
- A number of restrictions related to FADs for purse seine vessels in the IATTC Convention Area (50 CFR 300.22(a)(3); 50 CFR 300.28).

The definitions of “Active FAD” and “Force majeure” included in 50 CFR 300.21 and the prohibitions against failing to comply with gear-stowing restrictions, time/area closure restrictions, and FAD-related restrictions described in 50 CFR 300.24 also continue to apply.

Classification

The NMFS Assistant Administrator has determined that this interim final rule is consistent with the Tuna Conventions Act of 1950 and other applicable laws.

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

This interim final rule does not contain a change to a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirement would continue to apply under the following OMB Control Numbers 0648-0214 (Pacific Islands Region Logbook Family of Forms) and 0648-0148 (West Coast Region Pacific Tuna Fisheries Logbook and Fish Aggregating Device Form).

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. All currently approved NOAA collections of information may be viewed at:

<https://www.reginfo.gov/public/do/PRAMain>.

Good Cause for Immediate Adoption

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a

final rule without seeking comment prior to the rulemaking. Under section 553(d) of the APA, an agency must delay the effective date of regulations for 30 days after publication, unless the agency finds good cause to make the regulations effective sooner.

The Assistant Administrator for Fisheries determined that good cause exists to issue this interim final rule without advance notice in a proposed rule or the opportunity for public comment and to make the rule effective immediately without providing a 30-day delay after publication. NMFS is obligated to implement these measures immediately to conserve tropical tuna stocks in the EPO and to comply with the international obligations of the United States under a binding resolution adopted by the IATTC under the Antigua Convention, which constitute good cause. Given the IATTC's delay in convening its 2020 annual meeting (typically held in June or July), its failure to adopt a binding Resolution at a meeting held November 30-December 4, 2020, and its adoption of a binding Resolution in late December (less than 2 weeks before the existing regulations were set to expire), it would be impracticable and contrary to the public interest in conserving tropical tuna stocks in the EPO and in ensuring U.S. compliance with international obligations to proceed with further notice and comment or to delay the effective date for 30 days before implementing the rollover conservation measures contained in this rule.

Commercial purse seine and longline vessels are expected to begin fishing for tropical tuna in the EPO on January 1, 2021, under the fishing restrictions that apply in the same year. If this rule were delayed pending publication of a proposed rule and consideration of additional public comments, there is potential for U.S. purse seine and longline vessels to be out of compliance with IATTC management measures, and for the United States to be out of compliance with our international obligations. Owners and operators of U.S. purse seine and longline vessels operating in the EPO are familiar with this Resolution because it is identical to the resolution in place for the past 3 years that

was implemented through notice and comment rulemaking. In addition, many of the affected individuals attended the 96th Extraordinary Meeting of the IATTC on December 22, 2020, where the Resolution was adopted. Industry representatives were also consulted in advance of the December meeting through a U.S. Delegation call and were involved in briefings and discussions with the U.S. Department of State and NOAA officials on the periphery of the December IATTC meeting. As soon as the rule is published, NMFS will send a notice of this rule to owners of vessels that are affected by this rule.

Ensuring conservation of tropical tuna stocks in the EPO and remaining in compliance with binding international obligations of the United States by expedient domestic implementation of Resolution C-20-05 through issuing this final rule now, rather than risking violation of our obligations or the health of tuna stocks, is in the public's interest and further supports the good cause for waiving the requirement to publish a notice of proposed rulemaking for public comment and for making the rule effective immediately upon publication. The IATTC will meet again in the upcoming months to discuss tropical tuna measures for 2022 and beyond.

NMFS encourages the public to participate in this rulemaking by submitting comments containing relevant information, data, or views. This interim final rule may be amended based on comments received.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603 and 604, requires an agency to prepare an initial and a final regulatory flexibility analysis whenever an agency is required by 5 U.S.C. 553 or any other law to publish a general notice of proposed rulemaking. Because NMFS found good cause under 5 U.S.C. 553(b)(3)(B) to forgo publication of a notice of proposed rulemaking, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 are not required for this rulemaking.

List of Subjects in 50 CFR Part 300

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

Dated: January 12, 2021.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart C is
amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

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

1. Amend § 300.25 by revising paragraphs (a)(2), (e)(1), and (e)(5) as follows:

§ 300.25 Fisheries management.

(a) * * *

(2) For calendar year 2021, there is a limit of 750 metric tons of bigeye tuna that may be caught by longline gear in the Convention Area by U.S. commercial fishing vessels that are over 24 meters in overall length. The catch limit within a calendar year is subject to increase if the United States receives a transfer of catch limit from another IATTC member or cooperating non-member, per paragraph (a)(5) of this section.

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(e) * * * (1) *72-day closure.* A commercial purse seine fishing vessel of the United States that is of class size 4-6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area for 72 days in calendar year 2021 during one of the following two periods:

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

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

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(5) *31-day area closure.* A fishing vessel of the United States of class size 4-6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on October 9, 2021, to 2400 hours on November 8, 2021, to fish with purse seine gear within the area bounded at the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude.

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