



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 240220-0053]

RIN 0648-BM01

Pacific Island Fisheries; Catch and Retention Limits for Striped Marlin in the Western and Central Pacific Ocean North of the Equator

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a catch limit of 457 metric tons (t) for Western and Central North Pacific Ocean (WCNPO) striped marlin caught by U.S. fishing vessels in the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC) Convention area north of the Equator and west of 150° W longitude (the action area) and a retention limit of 443 t for U.S. fishing vessels with Hawaii longline limited entry permits. If the retention limit is projected to be reached, NMFS will prohibit retention of striped marlin caught in the WCNPO by Hawaii longline vessels for the calendar year. Action is required under Magnuson-Stevens Fishery Conservation and Management Act Section 304(i) to address U.S. fishing vessels' relative impact on this

internationally managed stock, which is overfished and experiencing overfishing.

DATES: NMFS must receive comments by [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER***].

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA-NMFS-2022-0148, by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov> and enter NOAA-NMFS-2022-0148 in the Search box, click the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Send written comments to Sarah Malloy, Acting Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), 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).

The Western Pacific Fishery Management Council (Council) and NMFS prepared an environmental assessment (EA) that supports this proposed rule. The EA is available at <https://www.regulations.gov>, or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, or <https://www.wpcouncil.org>.

FOR FURTHER INFORMATION CONTACT: Savannah Lewis, PIRO Sustainable Fisheries, 808-725-5144.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage U.S. commercial fishing for Pelagic Management Unit Species (PMUS) under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (FEP) and implementing Federal regulations. Although the FEP indicates that PMUS have statutory exemptions from annual catch limits (ACL), the Magnuson-Stevens Act authorizes the Council to determine ACLs or other catch limits for PMUS if such actions are deemed appropriate and consistent with the Magnuson-Stevens Act and other statutory mandates. Magnuson-Stevens Act § 304(i) provides that where a fishery is overfished or approaching a condition of being overfished due to excessive international fishing pressure for which there are no management measures nor an international agreement to end overfishing, the appropriate Council is to develop recommendations for domestic

regulations to address the relative impact of U.S. fishing vessels on the stock.

Striped marlin (*Kajikia audax*) are an internationally managed, non-target species often caught in fisheries targeting tuna and retained due to their economic value. In a 2019 stock assessment, the Commission, of which the United States is a member, determined that WCNPO striped marlin were overfished and experiencing overfishing.

To address the Council's obligations under Section 304(i) of the Magnuson-Stevens Act, the Council took action at their 195th meeting in December 2022. The Council recommended and NMFS proposes domestic regulations to implement a 457 t U.S. catch limit for WCNPO striped marlin and a domestic retention limit of 443 t. The proposed 457 t domestic catch limit is consistent with the international catch limit for the United States based on the WCPFC Conservation and Management Measure (CMM) 2010-01, "Conservation and Management Measure for North Pacific Striped Marlin." Following the terms of the CMM, the U.S. catch limit was determined by calculating 20 percent of the highest annual U.S. catch of striped marlin reported from 2000-2003; the highest reported catch was 571 t, so a 20 percent reduction is 456.8 t, or 457 t.

Hawaii-based longline fisheries catch 97 percent or more of the total U.S. striped marlin landings and are monitored in-season. Other U.S. fisheries that catch

striped marlin, including Hawaii-based troll and handline fisheries, catch less than 3 percent of the total annual U.S. catch and lack real-time monitoring during the fishing season. To ensure that the proposed catch limit is not exceeded, the Council recommended and NMFS proposes a retention limit of 443 t, or 97 percent of the catch limit, for any U.S. fishing vessel with a Hawaii longline limited entry permit issued under 50 CFR 665.801(b). This limit ensures that when troll and handline catches are finalized after the season ends, the total U.S. catch of WCNPO striped marlin will not exceed the 457 t catch limit.

Under the proposed rule, striped marlin caught in the action area by a vessel holding a Hawaii limited entry longline permit issued under 50 CFR 665.801(b), including vessels that also hold an American Samoa longline limited entry permit or other permit, would be counted toward the proposed catch and retention limits. Currently, WCNPO striped marlin catch on the high seas (outside the 200 nautical miles (nm), or 370.4 km, exclusive economic zone adjacent to Hawaii) by fishing vessels with American Samoa longline limited entry permits are attributed to American Samoa.

With this proposed rule, all retained catch of WCNPO striped marlin in the action area by vessels with both Hawaii longline limited entry permits and American Samoa limited entry permits would be counted toward the proposed

domestic 457 t catch and 443 t retention limit. NMFS proposes this change to ensure that all U.S. catch of this stock is managed under the proposed domestic catch limit, as no separate limit for American Samoa currently exists. By itself, this limit is not expected to end overfishing, which is primarily the result of international fishing pressure. Additional international measures through the WCPFC will be necessary to end overfishing and rebuild the stock.

If NMFS projects, based on vessel logbook, landing and other available information, that the retention limit will be reached, the retention of striped marlin caught by U.S. longline vessels holding a Hawaii limited entry longline permit issued under 50 CFR 665.801(b) in the action area will be prohibited for the remainder of the calendar year. A retention prohibition would go into effect no earlier than 7 days after NMFS publishes a no-retention date notice in the **Federal Register**.

As indicated above, this rule alone is not expected to end overfishing on WCNPO striped marlin, which must be addressed at the international level. To that end, Section 304(i) requires the Secretary of Commerce, in cooperation with the Secretary of State, to take immediate and appropriate action at the international level to end overfishing. The U.S. delegation has brought recommendations to the WCPFC and continues to pursue

revised international measures. As these international negotiations continue, the U.S. domestic responsibility under Section 304(i) is to address the relative impact of U.S. fishing vessels on the stock.

Neither the Magnuson-Stevens Act nor its implementing regulations define relative impact. The regulations do, however, offer guidance on how to assess relative impacts in the international overfishing context. Specifically, the National Standard 1 (Optimal Yield) guidelines provide that the agency may consider such factors as domestic measures already in place, estimates of a nation's landings, estimates of a nation's mortality contributions, and management history of a nation, although these factors are not exhaustive. In evaluating the relative impacts of U.S. vessels to the striped marlin stock here, we recognize that no single nation's management actions can end the overfished status of this stock. We have taken into account the National Standard 1 factors in assessing the level of catch by U.S. vessels relative to the historical catch of other nations landing striped marlin along with other existing management measures expected to decrease striped marlin catch (e.g., wire leader prohibition). Until the WCPFC adopts management measures that can meaningfully address the status of the striped marlin, we believe this proposed catch and retention limit are consistent with our obligations under the Magnuson-Stevens Act and WCPFC

because they reflect the terms of CMM 2010-02 as applied to U.S. striped marlin catch.

International negotiations at the WCPFC have resulted in adoption of a rebuilding plan for this stock which requires rebuilding to 20 percent of unfished biomass with at least 60 percent probability by 2034. The rebuilding plan currently does not contain catch limits, although it acknowledges that catch reductions by all member nations are required to achieve the rebuilding target. Disagreement over international conservation measures and delayed stock assessments have hindered progress at the international level. Ahead of negotiations on catch limits at WCPFC, we recognize that any substantial changes to the catch limits of U.S. fishermen could create a conservation burden on U.S. fishermen that fishermen from other nations may not face. Therefore, the agency is proposing a catch limit that complies with existing international guidance without imposing additional burdens on U.S. fishing interests.

NMFS will consider public comments on this proposed rule and will announce the final rule in the **Federal Register**. NMFS must receive comments on this proposed action by the date provided in the **DATES** heading. NMFS may not consider comments postmarked or otherwise transmitted after that date. Regardless of the proposed rule, all other existing management measures would continue to apply in these fisheries.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FEP, Magnuson-Stevens Act Section 304(i) and other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the attached proposed rule, issued under the authority of the Magnuson-Stevens Act, will not have a significant economic impact on a substantial number of small entities.

The WCNPO striped marlin stock is overfished and experiencing overfishing due to excessive international fishing pressure. NMFS proposes to implement an annual catch limit of 457 t and retention limit of 443 t for striped marlin caught in the action area. The 457 t catch limit would apply to vessels with Hawaii longline limited entry permits as well as to Hawaii troll and handline vessels catching striped marlin in the action area. The retention limit would only apply to vessels with Hawaii longline limited entry permits wherein retention of striped

marlin by these vessels would be prohibited if the 443 t retention limit were projected to be reached. The troll and handline fisheries historically catch less than 3 percent of the total U.S. striped marlin catch and have a delay in reporting that makes it impossible to monitor catch in-season, so the retention limit would not apply to these troll and handline vessels. The retention limit on Hawaii longline catch is intended to prevent the three fisheries combined from reaching the catch limit. The proposed action is needed to address the Magnuson-Stevens Act section 304(i) requirement to develop recommendations for domestic regulations to address the relative impact of fishing vessels of the United States on this internationally managed, overfished stock lacking effective international management measures to end overfishing.

The proposed action would apply to up to 164 vessels with Hawaii longline limited entry permits. In 2021, 146 vessels participated in the Hawaii deep-set longline fishery, with annual fleet revenue of \$108.5 million and average annual per-vessel revenues of \$743,150. In 2021, 17 vessels participated in the Hawaii shallow-set fishery, with annual fleet revenue of \$4.7 million and average annual per-vessel revenues of \$276,470 (WPFMC, 2022). There are no anticipated upfront costs associated with the proposed action for Hawaii permitted longline fishery participants and no direct impacts to longline fisheries if

longline catch of striped marlin does not reach the retention limit, as they would be able to retain their striped marlin catch. However, the proposed action may lead to a loss in revenue for these fishery participants if the retention limit is reached. The Hawaii-based longline fishery targets tuna (deep-set) and swordfish (shallow-set); striped marlin is a non-target species for this fishery. However, because striped marlin has market value, longline fishermen generally retain striped marlin catch. Using the 2021 average price per pound for striped marlin and average annual landings over the 2016-2020 time frame, NMFS expects that the value of striped marlin from the action area would be \$2 million annually. Between 2014 and 2020, the Hawaii longline fleet has exceeded the 443 t retention limit only once with a catch of 447 t in 2019. Had the retention limit been in place that year, at \$2.54 per pound, the associated revenue loss would be an estimated \$22,400 fleetwide. With 147 active vessels as of August 2022, the estimated expected loss per vessel would have been \$152 per vessel, which likely would have been less than 0.1 percent of annual landed value among most, if not all, vessels. For most years, NMFS anticipates that the longline fishery would not exceed the retention limit and therefore anticipates little to no economic impact from the proposed rule to this fishery overall. The proposed action would also apply to the hundreds of vessels that

participate in the Hawaii handline and troll fisheries through the catch limit, but these fisheries would not be directly affected by the proposed action, as neither the retention limit nor retention prohibition would apply to them.

NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing, North American Industry Classification System (NAICS) code 11411, 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. Based on available information, NMFS has determined that all affected entities are small entities under the NMFS standard, as they are engaged in the business of fish harvesting, independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million. Even though this proposed action may apply to a substantial number of vessels, the implementation of this action would not result in significant adverse economic impact to individual vessels.

NMFS anticipates no change in fishing activity from the proposed action, independent of the retention limit

being reached (*i.e.*, area fished, number of vessels and trips, number and depth of hooks, or deployment techniques) because striped marlin are not a target species. The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small organizations or government jurisdictions. Furthermore, there would be little, if any, disproportionate adverse economic impacts from the proposed action based on gear type or relative vessel size. The proposed action also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR 665

Fisheries, Fishing, Hawaii, Longline, Limited access permit, Pacific Islands, Western Pacific.

Dated: February 20, 2024.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665 -- FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Amend § 665.800 by adding, in alphabetical order, the definition of "Non-retention date" to read as follows:

§ 665.800 Definitions.

* * * * *

Non-retention date means the date upon which the Regional Administrator projects that a retention limit will be exceeded; retention of a species identified under § 665.813 is prohibited as specified under § 665.802, until the end of the fishing year.

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3. Amend § 665.802 by adding paragraph (p) to read as follows:

§ 665.802 Prohibitions.

* * * * *

(p) Fail to immediately release any striped marlin captured after the non-retention date in the Pacific Ocean north of the Equator (0° lat.) and west of 150° W longitude by a vessel registered for use under a longline permit issued under § 665.801(b), in violation of § 665.813(k).

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4. Amend § 665.813 by redesignating paragraph (k) as paragraph (l) and adding a new paragraph (k) to read as follows:

§ 665.813 Western Pacific longline fishing restrictions.

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(k) *Striped marlin retention limit.* (1) There is a catch limit of 457 metric tons of striped marlin each year from the Pacific Ocean north of the Equator (0° lat.) and west of 150° W longitude. There is a retention limit of 443 metric tons by vessels registered for use under a longline permit issued under § 665.801(b).

(2) NMFS will monitor striped marlin catch with respect to the limits established under paragraph (k)(1) of this section using longline landings, logbook, and other available information.

(3) When the retention limit is projected to be reached, based on analyses of available information in paragraph (k)(2) of this section, the Regional Administrator shall publish notification to that effect in the **Federal Register** that includes a specified non-retention date that is not earlier than 7 days after the **Federal Register** publication date until the end of the calendar year in which the retention limit was projected to be reached.

(4) Once a notification is made pursuant to paragraph (k)(3) of this section, a fishing vessel registered for use under a longline permit issued under § 665.801(b) may not retain on board, transship, or land striped marlin captured by longline gear in the Pacific Ocean north the Equator (0° lat.) and west of 150° W longitude, except striped marlin retained prior to the non-retention date. Any striped marlin already on board upon the effective non-retention date may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that the striped marlin is landed within 14 days after the effective non-retention date.

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