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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 240522-0142]

RIN 0648-BM86

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Changes to Purse Seine Fish Aggregating Device Closure Periods

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS seeks comments on this proposed rule issued under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act). The proposed rule would implement a recent decision of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). This decision shortens the duration of fish aggregating device (FAD) closure periods for the U.S. purse seine fishery. This action is necessary to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Species in the Western and Central Pacific Ocean (Convention), to which it is a formal signatory to the Convention (Contracting Party).

DATES: Comments on the proposed rule must be submitted in writing by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2024-0057>. You may submit comments on this document, identified by NOAA-NMFS-2024-0057, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA-NMFS-2024-0057 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Sarah Malloy, Acting 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, may not be considered by NMFS. 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).

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

Copies of the Regulatory Impact Review (RIR) and the documents prepared for National Environmental Policy Act (NEPA) purposes are available at <https://www.regulations.gov> or may be obtained from Sarah Malloy, Acting Regional Administrator, NMFS PIRO (see address above).

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

SUPPLEMENTARY INFORMATION:

Background on the Convention

The Convention is focused 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 Western and Central Pacific Ocean (WCPO). To accomplish this objective, the Convention established the 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, as appropriate, 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.

Background on the WCPFC Decision

This proposed rule would implement specific provisions of Conservation and Management Measure (CMM) 2023-01, “Conservation and Management Measure for Bigeye, Yellowfin, and Skipjack Tuna in the Western and Central Pacific Ocean.” The Commission adopted CMM 2023-01 at its twentieth regular annual session, in December 2023, and it went into effect in February 2024. The provisions of CMM 2023-01 are described in more detail below.

CMM 2023-01 is the latest in a series of CMMs devoted to the conservation and management of tropical tuna stocks, particularly stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*). The stated

purpose of CMM 2023-01 is to support fisheries for skipjack tuna, bigeye tuna, and yellowfin tuna in the Convention Area that benefit WCPFC members and their communities, and to do so in a way that is fair to all WCPFC members and addresses the special requirements of developing States and Participating Territories. CMM 2023-01's provisions are based on specific objectives for each of the three tropical tuna stocks.

Many of the provisions of CMM 2023-01 have already been implemented by NMFS or will be implemented in separate rulemakings. This proposed rule would implement the provisions regarding FAD prohibition periods for U.S. purse seine vessels.

Under NMFS' current regulations at 50 CFR 300.223(b)(2), the FAD prohibition periods are from July 1 through September 30, during each calendar year for the high seas and exclusive economic zones (EEZs) in the Convention Area, and from November 1 through December 31 during each calendar year solely on the high seas in the Convention Area. Thus, U.S. purse seine vessels are currently prohibited from setting on FADs for three months in EEZs and on the high seas in the Convention Area, and for an additional two months on the high seas in the Convention Area. Per 50 CFR 300.223, these FAD prohibition periods do not apply in the area of overlap between the WCPFC and the Inter-American Tropical Tuna Commission (IATTC).

Paragraph 13 of CMM 2023-01 reduces the 3-month FAD prohibition period for the EEZs and on the high seas in the Convention Area to one and a half months, running from July 1 to August 15 during each calendar year. This proposed rule would amend the regulations at 50 CFR 300.223(b)(2)(1) to revise the three-month FAD prohibition period for the EEZs and on the high seas to be July 1 through August 15 during each calendar year, consistent with CMM 2023-01.

Paragraph 14 of CMM 2023-01 reduces the additional two-month high seas FAD prohibition period to one month – either April, May, November, or December. Previously, WCPFC members could choose between implementing the two-month additional FAD prohibition period on the high seas in April and May or in November and December. NMFS had previously determined that implementing the two-month additional FAD prohibition period in November and December would be more cost-effective than implementing the prohibition period in April and May. Regulations at 50 CFR 300.223(b)(2)(2) implement the additional two-month high seas FAD prohibition period in November and December. Based on the analysis in the IRFA and RIR for this proposed rule, NMFS concludes that continuing to implement the one month high seas FAD prohibition period late in the year would be more cost-effective for the fleet. NMFS proposes to implement the additional one-month high seas FAD prohibition period in December 2024 and in future calendar years. The American Tunaboat Association has also provided preliminary information indicating the U.S. purse seine fleet’s preference for a December closure in 2024. NMFS specifically requests comments on this aspect of the proposed rule and will make adjustments in the final rule as warranted.

CMM 2023-01 is in effect until February 15, 2027. However, as has been NMFS’s practice, the elements of the proposed rule would remain in effect until they are replaced or amended, to avoid a lapse in the management of the fisheries.

Proposed Action

The elements of the proposed rule are detailed below.

In accordance with CMM 2023-01, NMFS proposes to shorten the duration of the FAD prohibition period from July 1 through August 15 during each calendar year in the

Convention Area between the latitudes of 20° N and 20° S (inclusive of the EEZs and high seas in the Convention Area and excluding the area of overlap between the WCPFC and the IATTC). Regarding the additional one-month FAD prohibition period on the high seas in the Convention Area, after considering the objectives of CMM 2023-01, the expected economic impacts on U.S. fishing operations and the nation as a whole, and expected environmental and other effects, NMFS expects that a high seas FAD prohibition period in December of each calendar year may be the most cost effective. Thus, NMFS is proposing to implement the high seas FAD prohibition period in December in 2024 and during each calendar year thereafter. NMFS specifically seeks public comment on this aspect of the proposed rule. A comparison of the options' expected direct economic impacts on affected fishing businesses is provided in the RIR. The RIR also includes discussion of potential impacts to the cannery in Pago Pago, American Samoa.

To the extent that the FAD closures under the proposed rule cause more fishing effort and/or catches, the delivery of more tuna from the U.S. purse seine fleet, and consequent reduced adverse economic impacts to the producers (fishing businesses), they could also bring reduced adverse impacts to business sectors with forward linkages to the producers, such as the cannery in Pago Pago that processes much of their catches.

NMFS also analyzed the environmental effects of the proposed action on living marine resources in the affected environment. NMFS published a supplemental environmental assessment (SEA) in 2021 that analyzed the the potential impacts of implementation of WCPFC tropical tunas measures through 2025. In the SEA, NMFS analyzed the impacts of the FAD prohibition periods of various lengths that were either

shorter or longer in duration than the FAD prohibition periods under this proposed rule. The SEA considered that FAD prohibition periods might influence the overall composition of catch of the fishery, both in terms of species and fish sizes. If there is a transfer of effort to fishing on unassociated sets during the prohibition periods, catches would more likely consist of less bigeye tuna, and possibly more larger-sized yellowfin tuna and skipjack tuna. It is possible that shorter FAD prohibition periods could result in reduced mortality for some stocks. However, to the extent there is a shift in fishing patterns and practices, any effects on stocks are expected to be small compared to typical year-to-year interactions driven by changing oceanic and economic conditions. Indeed, many other factors affect these stocks, and it is unlikely that changes to the duration of FAD fishing alone would significantly impact their statuses. The WCPO stocks of the tuna species mostly likely to be caught while fishing on FADs – yellowfin tuna, bigeye tuna, and skipjack tuna – are all determined to be not overfished and not subject to overfishing. The SEA also considered impacts of FAD fishing on non-target species and protected resources and likewise determined that any reduction in interactions resulting from longer FAD prohibition periods would likely be small compared to typical year-to-year variations in such interactions. Based on the analyses in the SEA, NMFS concluded that the FAD prohibition periods would not significantly impact living marine resources in the affected environment.

As currently defined in 50 CFR 300.211, a FAD is “any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any object used for that purpose that is situated on board a vessel or otherwise out of the water. The definition of FAD does not

include a vessel.” Under this proposed rule, the regulatory definition of a FAD would not change. Although the definition of a FAD does not include a vessel, the restrictions during the FAD prohibition periods would include certain activities related to fish that have aggregated in association with a vessel, or drawn by a vessel, as described below.

The prohibitions applicable to these proposed FAD-related measures are in existing regulations at 50 CFR 300.223(b)(1)(i)-(v). Specifically, during the FAD prohibition periods in each calendar year, owners, operators, and crew of fishing vessels of the United States equipped with purse seine gear shall not do any of the following activities in the Convention Area (excluding the area of overlap between the WCPFC and IATTC) between 20° N latitude and 20° S latitude:

- 1) Set a purse seine around a FAD or within 1 nautical mile (1,852 meters) of a FAD;

- 2) Set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous 8 hours, setting the purse seine in an area in which a FAD has been inspected or handled within the previous 8 hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel;

- 3) Deploy a FAD into the water;

- 4) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that: a FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to

property or risk to human safety; and a FAD may be removed from the water and if removed may be cleaned, provided that it is not returned to the water; or

5) From a purse seine vessel or any associated skiffs, other watercraft or equipment, submerge lights under water, suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment, or direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew.

These prohibitions would not apply during emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage.

The proposed rule also would make a technical correction regarding the area of application in 50 CFR 300.223(b)(3)(i) to explicitly state that the requirements regarding activating FADs apply in the Convention Area. The current regulatory text does not include the specific area of application.

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.

Administrative Procedure Act (APA)

NMFS finds that a 15-day comment period for this action provides a reasonable opportunity for public participation in this action pursuant to APA section 553(c) (5 U.S.C. 553(c)), while also ensuring that the first revised FAD prohibition period is

finalized before the end date of August 15, 2024. The Commission adopted CMM 2023-01 in December 2023, and NMFS has been diligently working on completing the rulemaking since that time. Rulemakings of this nature generally take approximately one-year to complete in order to satisfying the requirements of APA and other U.S. laws, and thus, in order to complete the rulemaking by August 15, 2024, NMFS is proceeding in an accelerated manner. Stakeholder and industry groups have been involved with the development of this action. Providing for more than 15 days advance notice and public comment on the proposed rule increases the risk that the existing regulations extending the FAD prohibition period through September 30th would remain in place causing unnecessary burden on the regulated community. Thus, in order to provide the public with the opportunity to comment on this proposed rule while ensuring that the agency has sufficient time to consider any public comments and publish a final rule that is effective by August 15, 2024, NMFS is providing the public with a 15-day comment period on this proposed rule.

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. Determinations to Hawaii and each of the Territories were submitted on March 8, 2024, for review by the responsible state and territorial agencies under section 307 of the CZMA. The Hawaii Coastal Zone Management Program responded on March 12, 2024, stating that because the U.S. WCPO purse seine fishery operates outside the jurisdiction of its enforceable policies, it

would not be reviewing the consistency determination. Guam requested supplemental information that NMFS provided on March 28, 2024.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of 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. The IRFA includes analysis of two no-action alternatives in comparison to the proposed action. The first no-action alternative is no FAD closure periods in place at all. The second no-action alternative is maintaining the status quo, as included in the current regulations at 50 CFR 300.223(b)(2), which is the three-month FAD closures in the full Convention Area and the separate two-month FAD closure just on the high seas in the Convention Area.

A detailed description of the proposed rule, why it is being considered as well as its objectives, and the legal basis for the proposed rule are contained in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY**

INFORMATION 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 (see 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 purse seine fishing vessels used to fish for HMS in the Convention Area. Based on the number of U.S. purse seine vessels with WCPFC Area Endorsements, which are required to fish on the high seas in the Convention Area, the estimated numbers of affected purse seine fishing vessels is 13.

Based on limited financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes 80 percent of the vessels in the purse seine fleet are small entities as defined by the RFA (*i.e.*, 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 2020-2022 reveals that average annual revenue among vessels in the fleet was about \$7 million (NMFS unpublished data combined with price data from the Pacific Island Forum Fisheries Agency and https://investor.thaiunion.com/raw_material.html accessed on June 12, 2023), and 12 participating vessels qualified as small entities, with estimated vessel revenue of less than \$11 million (based on the average revenue across the most recent 3 years for which data is available).

Recordkeeping, Reporting, and Other Compliance Requirements

The reporting, recordkeeping and other compliance requirements of this proposed rule are described earlier in the **Proposed Action** sub-section of the **SUPPLEMENTARY INFORMATION section of the** preamble. The classes of small

entities subject to the requirements and the types of professional skills necessary to fulfill the requirements are described below.

The FAD restrictions being implemented under the proposed rule would not establish any new reporting or recordkeeping requirements. The new requirement would be for affected vessel owners and operators to comply with the FAD restrictions described earlier in the **SUPPLEMENTARY INFORMATION** section of the preamble, including FAD prohibition periods throughout the Convention Area from July 1 through August 15 in each calendar and FAD prohibition periods just on the high seas in the Convention Area from December 1 through December 31 in each calendar year. The proposed rule would reduce the current FAD prohibitions periods by 50 percent in terms of duration.

Fulfillment of the element's requirements is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with the requirements are described below to the extent possible.

The proposed FAD restrictions would substantially constrain the manner in which purse seine fishing could be conducted in the specified areas and periods in the Convention Area compared to the no-action alternative of no closure periods in place at all; in those areas and during those periods, vessels would be able to set only on free, or "unassociated," schools.

With respect to the one and a half month FAD closure throughout the Convention Area, assuming that sets would be evenly distributed through the year, the number of annual FAD sets would be expected to be about 87.5 percent of the number that would occur without a seasonal FAD closure, and 12.5 percent more than during the existing

three-month FAD closure. This is calculated by assuming FAD setting would occur at the same rate throughout the year and that a one and half month closure would lead to FAD setting for 10.5 out of 12 months of the year instead of for the full 12 months (*i.e.*, 87.5 percent of the year). The existing 3-month closure currently leads to FAD setting for 9 out of 12 months of the year instead of the full 12 months (*i.e.*, 75 percent of the year).

With respect to the additional one-month high seas FAD closure, the effects of this element are difficult to predict. CMM 2023-01 includes four options for the one-month high seas FAD closure: April, May, November, or December. In 2018, NMFS analyzed the impacts of the two previous options included in earlier CMMs, which were the 2-month high seas FAD closure in April and May and the 2-month high seas FAD closure in November and December, using data from 2014-2017, and did not find any statistically significant differences between the average number of sets in high seas areas, or the number of FAD associated sets in the high seas across months. The earlier CMMs only included those two options for two-month high seas FAD closures and did not include the four options for one-month high seas FAD closures included in CMM 2023-01. However, NMFS did observe trends in the number of high seas and the number of FAD sets in the high seas areas that supported selection of the November-December FAD prohibition period. In particular, the number of FAD sets in the high seas areas were low during November and December due to fishing effort limits met prior to the end of the season. If the effort limit was reached prior to November, then the later prohibition period would have a lesser adverse direct economic impact on the U.S. purse seine fleet. The analysis also noted that unpredictable future conditions such as ex-vessel price and environmental conditions – could result in either closure period having a greater adverse

direct economic impact on the fleet. In 2018-2023, NMFS chose to implement the 2-month high seas FAD closure in November-December, and in 2018, the high seas was closed from September 19-December 31, and in 2019, the U.S. EEZ and the high seas were closed from October 9-November 28 and from December 9-31. Thus, in 2018 and for most of 2019, the 2-month high seas FAD closure had little to no additional impacts due to the closures from the fishing effort limits already being reached. Similarly, for 2024-2026, if the high seas are closed to all purse seine fishing towards the end of the year as a result of the fishing effort limit being reached, the high seas FAD closure during either November or December would have no additional effect whatsoever. In that situation, given that any closure would likely occur later in the year, implementing the one-month closure in December would be likely to have less effect than implementing the one-month closure in November. However, if the high seas are not closed to fishing during the closure period, given the performance of the fleet in recent years, the prohibition on FAD setting would make the high seas less favorable for fishing than they otherwise would be, since only unassociated sets would be allowed there, but it is not possible to characterize how influential that factor would be. Thus, it is not possible to predict the effects in terms of the spatial distribution of fishing effort or the proportion of fishing effort that is made on FADs.

With respect to both the one and a half month FAD closure and one-month additional high seas FAD closure compared to the no-action alternative of no FAD closures in place at all, as for the limits on fishing effort, vessel operators might choose to schedule their routine maintenance periods so as to take best advantage of the available opportunities for making FAD sets (*e.g.*, during the FAD closures). However, the limited

number of vessel maintenance facilities in the region might constrain vessel operators' ability to do this.

Vessels in the U.S. WCPO purse seine fleet make both unassociated sets and FAD sets when not constrained by regulation, so one type of set is not always more valuable or efficient than the other. Which set type is optimal at any given time is a function of immediate conditions in and on the water. Other factors, such as fuel prices (unassociated sets involve more searching time and thus tend to bring higher fuel costs than FAD sets) and market conditions (*e.g.*, FAD fishing, which tends to result in greater catches of lower-value skipjack tuna and smaller yellowfin tuna and bigeye tuna than unassociated sets, might be more attractive and profitable when canneries are not rejecting small fish) also contribute to whichever set type is optimal at a given time. Clearly, the ability to do either type of set is valuable, and constraints on the use of either type can be expected to bring adverse economic impacts to fishing operations. Thus, the greater the constraints on the ability to make FAD sets, the greater the expected economic impacts of the action. Because the factors affecting the relative value of FAD sets and unassociated sets are many, and because the relationships among them are not well known, it is not possible to quantify the expected economic impacts of the FAD restrictions. However, it appears reasonable to conclude two points. First, the FAD restrictions would adversely impact producer surplus relative to the no-action alternative of no FAD prohibition periods in place. The fact that the fleet has made such a substantial portion of its sets on FADs in the past indicates that prohibiting the use of FADs in the specified areas and periods could bring substantial costs and/or revenue losses. Second, vessel operators might be able to mitigate the impacts of the FAD restrictions by scheduling their routine vessel and

equipment maintenance during the FAD closures, but this opportunity might be constrained by the limited vessel maintenance facilities in the region.

Compared to the second no-action alternative or status quo alternative of FAD prohibition periods that would be twice as long as the FAD prohibition periods that would be implemented under the proposed rule, any adverse effects would be proportionally reduced. Thus the adverse effects in terms of costs and revenue losses would be less under the proposed rule than under the status quo no-action alternative.

Disproportionate Impacts

In the purse seine fishing sector, approximately 80 percent of the affected entities are small entities, so disproportionate impacts would not be expected. The direct effect of the proposed rule would be to constrain fishing effort, as compared to the no-action alternative of no closure periods in place at all, by purse seine fishing vessels, with consequent constraining effects on both revenues (because catches would be less) and operating costs (because less fishing would be undertaken). Although some purse seine fishing entities are larger than others, NMFS is not aware of any differences between the small entities and the large entities (as defined by the RFA) in terms of their capital costs, operating costs, or other aspects of their businesses. Accordingly, there is no information to suggest that the direct adverse economic impacts on small purse seine entities would be disproportionately greater than those on large purse seine entities. However, the direct effect of the proposed rule would be to reduce constraints on fishing effort, as compare to the status quo no-action alternative, by purse seine fishing vessels.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that duplicate, overlap with, or

conflict with the proposed regulations.

Alternatives to the Proposed Rule

NMFS has sought to identify alternatives that would minimize the proposed rule's economic impacts on small entities (*i.e.*, significant alternatives). Taking the no-action alternative of no FAD prohibition periods could result in lesser adverse economic impacts than the proposed action for affected entities, but NMFS does not prefer this no-action alternative, because it would be inconsistent with the United States' obligations under the Convention. Taking the no-action alternative of retaining the status quo FAD prohibition periods that are twice as long in duration could result in greater adverse economic impacts than the proposed action for affected entities. This alternative would also be inconsistent with the United States' obligations under the Convention. Alternatives identified for the proposed rule are discussed below.

NMFS considered in detail the timing of the additional one-month FAD closure for the high seas. CMM 2023-01 allows members to choose either April, May, November, or December, as the additional month for the high seas FAD closure. NMFS has compared the expected direct economic impacts of these four options (implementing a high seas FAD closure in April, May, November, or December) on purse seine fishing businesses in the RIR for the proposed rule, by analyzing two discrete alternatives. Due to the similarities between implementing the high seas FAD closure in April or May (a spring closure) or in November or December (a winter closure), the RIR analyzed the impacts of implementing the closure in April or May as compared to November or December. The analysis finds a closure later in the year – a December closure – is more likely to have a lesser direct economic impact on those businesses for the following

reasons: because the later closure period is more likely to run concurrently with a closure of the high seas in the Convention Area to purse seine fishing (if the fishing effort limits are reached), in which case the FAD closure would bring no additional economic impacts.

Paperwork Reduction Act

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 300

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

Dated: May 23, 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 300 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 § 300.223, revise paragraphs (b)(2) and (b)(3)(i) to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(b) * * *

(1) * * *

(2) The requirements of paragraph (b)(1) of this section shall apply:

(i) From July 1 through August 15, in each calendar year;

(ii) In any area of high seas, from December 1 through December 31, in each calendar year.

(3) ***Activating FADs for purse seine vessels.*** (i) A vessel owner, operator, or crew of a fishing vessel of the United States equipped with purse seine gear shall turn on the tracking equipment of an active FAD while the FAD is onboard the vessel and before it is deployed in the water in the Convention Area.

* * * * *

[FR Doc. 2024-11732 Filed: 5/28/2024 8:45 am; Publication Date: 5/29/2024]