

G. *Unfunded Mandates Reform Act*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

2. In the § 172.101 Hazardous Materials Table, in Column (1), as amended at 64 FR 10753 effective October 1, 1999, the following changes are made:

a. In Column (1), for the entries “Aviation regulated liquid, n.o.s.” and “Aviation regulated solid, n.o.s.”, the letter “A” is added in alphabetical order.

b. In Column (1), for the entry, “Compounds, tree killing, liquid or Compounds, weed killing, liquid” (NA2810), the letter “G” is added in alphabetical order.

c. For the entries “Hydrocarbon gas mixture, compressed, n.o.s.” and “Hydrocarbon gas mixture, liquefied, n.o.s.”, the letter “G” is removed each place it appears.

3. In Appendix B to § 172.101, the List of Marine Pollutants is amended by removing two entries and adding one entry in alphabetical order to read as follows:

APPENDIX B TO § 172.101—LIST OF MARINE POLLUTANTS

S.M.P. (1)	Marine pollutant (2)
[REMOVE:] PP	<i>normal</i> -Heptyl aldehyde. <i>normal</i> -heptaldehyde.
[ADD:]	
*	*
*	*
*	n-Heptaldehyde.
*	*
*	*

4. In § 172.203, in paragraph (k) introductory text, a new sentence is added at the end to read as follows:

§ 172.203 Additional description requirements.

(k) * * * Shipping descriptions for toxic materials that meet the criteria of Division 6.1, PG I or II (as specified in § 173.132(a) of this subchapter) or Division 2.3 (as specified in § 173.115(c) of this subchapter) and are identified by the letter “G” in Column (1) of the § 172.101 Table, must have the technical name of the toxic constituent entered in parentheses in association with the basic description.

§ 172.203 [Amended]

5. In addition, in § 172.203 as amended at 64 FR 10775 effective October 1, 1999, the following changes are made:

- a. Paragraph (k)(1) is removed.
- b. Paragraphs (k)(2) and (k)(3) are redesignated as paragraphs (k)(1) and (k)(2), respectively.
- c. Paragraph (m)(2) is removed.
- d. Paragraph (m)(3) is redesignated as paragraph (m)(2).

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

7. In § 173.28, in paragraph (c)(2)(iii), as revised at 64 FR 10776 effective October 1, 1999, “; and” is removed at the end of the sentence and a period is added in their place and a new sentence is added to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

- * * * * *
- (c) * * *
- (2) * * *

(iii) * * * (For a UN 1H1 plastic drum, replacing a removable gasket or closure device with another of the same design and material that provides equivalent performance does not constitute reconditioning); and * * * * *

§ 173.28 [Amended]

8. In addition, in § 173.28, in paragraph (c)(2) introductory text, as revised at 64 FR 10776 effective October 1, 1999, the wording “or a UN 1H1 plastic drum” is added immediately following the words “other than a metal drum”.

§ 173.32c [Amended]

9. In § 173.32c, in paragraph (j), as revised at 64 FR 10777 effective October 1, 1999, in the first sentence, the wording “may be loaded to” is removed and the words “may not be loaded to” are added in its place.

§ 173.222 [Amended]

10. In § 173.222, as revised at 64 FR 10779 effective October 1, 1999, the following changes are made:

- a. In paragraph (c) introductory text, the wording “For transportation by aircraft, the” is removed and “The” is added in its place.
- b. In paragraph (c)(4), the wording “and is offered for transportation by aircraft” is removed.

Issued in Washington, DC, on August 9, 1999, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 990212047–9208–02; I.D. 111998C]

RIN 0648–AL28

International Fisheries Regulations; Pacific Tuna Fisheries

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

ACTION: Final rule; implementation of Inter-American Tropical Tuna Commission (IATTC) recommendations.

SUMMARY: NMFS issues final regulations to implement recommendations of the

IATTC to conserve and manage the tuna fisheries of the Eastern Tropical Pacific Ocean (ETP). This rule provides for an annual announcement of tuna harvest quotas, closure of the U.S. fishery in the IATTC's Convention Area or in the Yellowfin Regulatory Area (CYRA) when quotas have been reached, and implementation of other measures recommended by the IATTC to ensure conservation and management of fishery resources. The rule also prohibits U.S. citizens from utilizing vessels that service fish-aggregating devices (FADs) and prohibits the transshipment at sea by U.S. purse seine vessels of purse seine-caught tuna. This final rule is intended to ensure that U.S. fisheries are conducted according to the IATTC's recommendations, as approved by the Department of State.

DATES: Effective September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Svein Fougner or James Morgan, Sustainable Fisheries Division, Southwest Region, NMFS, 562-980-4030.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure conservation and management of yellowfin and skipjack tuna and other species taken by tuna fishing vessels in the ETP. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of tuna stocks and conditions in the fisheries. Each year, the IATTC recommends appropriate harvest levels (quotas) and/or other measures to prevent overexploitation and promote maximum sustainable yield (MSY). Each member country of the IATTC is responsible for enforcing quotas and other measures with respect to its own fisheries. As required by the Tuna Conventions Act of 1950, the recommendations of the IATTC must be approved by the Secretary of State before implementation for U.S. fisheries.

NMFS published a proposed rule on February 25, 1999 (64 FR 9296), that provided background on the 1998 recommendations that were not implemented and other permanent measures that are implemented by this rule. That background is not repeated here.

Comments and Responses

Three organizations commented on the proposed rule. Although most of the

comments cannot be addressed by Federal regulations, the comments are summarized below with NMFS responses.

Comment 1: The U.S. Government should insist on the formation of a compliance committee in the IATTC to ensure that all member countries abide by IATTC recommendations.

Response: The United States has supported establishing such a committee under the auspices of the IATTC and has proposed terms of reference for a compliance committee. At its annual meeting in June 1999, the IATTC agreed to establish a Compliance Committee based on the U.S. terms of reference.

Comment 2: Fishermen should be prohibited from fishing all gear types, not only purse seines, when such a prohibition is necessary to reduce the harvest of small fish.

Response: This rule does not impose an immediate prohibition of sets on floating objects. Although the IATTC resolution of October 1998 specifically recommended prohibiting purse seines from being set on floating objects after the bigeye quota is reached, the prohibitions in § 300.28(b) have been revised to authorize the Southwest Regional Administrator, NMFS (Regional Administrator) to prohibit any fishing gear, as specified in the notification to fishermen, if such a prohibition is necessary for the conservation of fishery resources or other species.

Comment 3: One commenter expressed concern about the need for a quota on bigeye tuna and the quality of the data used to establish it. Questions were raised about using data obtained from foreign longline vessels, which may not have observers; the ability of observers on any vessel to distinguish between small yellowfin and bigeye tuna, and the effects of El Nino on the resource.

Response: A 45,000-metric ton (mt) quota on bigeye tuna was recommended by the IATTC and adopted by the member countries in 1998. The questions raised by the commenter, however, are legitimate and have a bearing on future decisions that the IATTC may make. Other nations also have questioned the quality of the data used to assess bigeye stocks and the effects of harvesting small bigeye on floating object sets. The IATTC staff are aware of these questions and have research underway to answer some of them. U.S. scientists are also obtaining U.S. vessels' catch and effort data to determine the extent to which those data confirm the IATTC staff analyses.

Comment 4: The prohibition on fishing on floating objects as a way of reducing the harvest of small fish is too simplistic. It implies that the only goal is the maximum productivity of tuna without recognizing the impact on other species. It also discriminates against nations that depend on this fishing strategy as a way to reduce the take of dolphins.

Response: This rule does not prohibit fishing on floating objects (natural or man-made); rather, it authorizes the Regional Administrator to prohibit fishing on floating objects in the future. The 1998 quota on bigeye would have been implemented by prohibiting sets on floating objects if and when the quota was reached. The bigeye quota is enforced this way because floating objects sets are responsible for virtually all the catch of small bigeye tuna. In fact, some nations may have been reluctant to set the 1999 quota in part because they did not want their vessels to be restricted from using a strategy on which they had become dependent. The U.S. supported the 1998 quota reluctantly because U.S. vessels are largely dependent on floating object fishing. However, in a meeting in January 1999, NMFS insisted that any consideration of management measures directed at any single fishing strategy be based on a full analysis of impacts on the stocks, on other ecosystem components (e.g., dolphin and other non-fish species), and on the vessels engaged in the fishery. The U.S. Department of State also actively seeks input from U.S. vessel owners to ensure that U.S. positions consider fully the impacts of alternative measures on U.S. firms.

Comment 5: The 15-percent incidental catch for yellowfin tuna that the IATTC recommended for the closed season in 1998 would allow uncontrolled mortality in excess of the estimated MSY.

Response: The IATTC resolutions in 1998 regarding yellowfin tuna included recommendations that apply to fishing vessels after the quota is reached, such as allowing a vessel to retain a 15-percent incidental harvest by weight of yellowfin tuna while fishing for other species of tuna. The 15-percent incidental catch allocation for yellowfin tuna will not allow uncontrolled mortality in excess of MSY. The IATTC estimates the amount of yellowfin tuna that will be caught during a closure and includes those data in its decision about when to close the fishery. The closure date is chosen so that the total yellowfin harvest (including incidental catch) will not exceed MSY. This final rule authorizes the Regional Administrator

to close the U.S. fishery for yellowfin tuna or other species of tuna at such time as the IATTC Director of Investigations advises that the quota will be reached.

Bigeye and FAD issues in 1999

In 1999, the IATTC recommended that action be taken to limit the catch of bigeye tuna to 40,000 mt by prohibiting purse seine sets on all types of floating objects in the Convention Area when this harvest level is reached. This would tend to reduce the harvest of small fish and increase the catch-per-recruit.

This final rule establishes a procedure for implementing future recommendations of the IATTC. In addition, this final rule implements the following two measures, which were recommended by the IATTC in 1998 and approved by the Department of State:

- 1. The use of tender vessels, which are vessels that do not engage in purse seining but tend FADS in support of tuna fishing operations, in the Convention Area is prohibited; and
- 2. The transshipment of tuna by purse seine vessels at sea in the Convention Area is prohibited.

NMFS will notify fishermen of any future resolutions adopted by the IATTC and approved by the Department of State.

Changes to the Proposed Rule

Changes to the proposed rule were made to the definition of Regional Administrator to allow a designee to act in his or her stead, and to the prohibitions section at § 300.28(b) to authorize the Regional Administrator to prohibit the use of any fishing gear around floating objects, if such a prohibition is necessary for the conservation of fishery resources or other species.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 300

Fish, Fisheries, Fishing, High seas fishing, International agreements,

Reporting and recordkeeping requirements.

Dated: August 10, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Pacific Tuna Fisheries

1. The authority citation for subpart C continues to read as follows:

Authority: 16 U.S.C. 951-961 and 971 *et seq.*

2. Section 300.20 is revised to read as follows:

§ 300.20 Purpose and scope.

The regulations in this subpart implement the Tuna Conventions Act of 1950 (Act) and the Atlantic Tunas Convention Act of 1975. The regulations provide a mechanism to carry out the recommendations of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean so far as they affect vessels and persons subject to the jurisdiction of the United States. They also carry out the recommendations of the International Commission for the Conservation of Atlantic Tunas for the conservation of bluefin tuna, so far as they affect vessels and persons subject to the jurisdiction of the United States.

3. Section 300.21 is amended by removing the definition of "Regional Director" and adding definitions for "Bigeye tuna", "Commission's Yellowfin Regulatory Area (CYRA)", "Convention Area", "Fish aggregating device (FAD)", "Fishing trip", "Floating object", "Incidental catch or incidental species", "Land or Landing", "Observer", "Regional Administrator", "Tender vessel", "Transship", and "Transshipment receiving vessel" in alphabetical order to read as follows:

§ 300.21 Definitions.

* * * * *

Bigeye tuna means the species *Thunnus obesus*.

* * * * *

Commission's Yellowfin Regulatory Area (CYRA) means the waters bounded by a line extending westward from the mainland of North America along the 40° N. latitude parallel, and connecting the following coordinates:

- 40° N. lat., 125° W. long.;
- 20° N. lat., 125° W. long.;

- 20° N. lat., 120° W. long.;
- 5° N. lat., 120° W. long.;
- 5° N. lat., 110° W. long.;
- 10° S. lat., 110° W. long.;
- 10° S. lat., 90° W. long.;
- 30° S. lat., 90° W. long.; and then eastward along the 30° S. latitude parallel to the coast of South America.

Convention Area means the waters within the area bounded by the mainland of the Americas, lines extending westward from the mainland of the Americas along the 40° N. lat. and 40° S. lat., and 150° W. long.

Fish aggregating device (FAD) means a manmade raft or other floating object used to attract tuna and make them available to fishing vessels.

Fishing trip means a period of time between landings when fishing is conducted.

* * * * *

Floating object means any natural object or FAD around which fishing vessels may catch tuna.

Incidental catch or incidental species means species caught while fishing with the primary purpose of catching a different species. An incidental catch is expressed as a percentage of the weight of the total fish on board.

Land or Landing means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish on board the vessel are counted as part of the landing.

Observer means an individual placed aboard a fishing vessel under the IATTC observer program or any other international observer program in which the United States may participate.

* * * * *

Regional Administrator means the Administrator, Southwest Region, NMFS, or his designee.

* * * * *

Tender vessel means a vessel that does not engage in purse seine fishing but tends to FADs in support of tuna fishing operations.

Transship means to unload fish from a vessel that caught fish to another vessel.

Transshipment receiving vessel means any vessel, boat, ship, or other craft that is used to receive fish from a fishing vessel.

4. In § 300.28, the section heading is revised, paragraphs (a) through (c) are redesignated as (e) through (g), respectively, and new paragraphs (a) through (d) are added to read as follows:

§ 300.28 Prohibitions.

* * * * *

- (a) Land any species of tuna during the closed season for that species in excess of the amount allowed by the Regional Administrator.

(b) Fish on floating objects in the Convention Area using any gear type specified by the Regional Administrator's notification of closure issued under § 300.29.

(c) Use tender vessels in the Convention Area.

(d) Transship purse seine-caught tuna at sea within the Convention Area.

* * * * *

5. Section 300.29 is added to Subpart C to read as follows:

§ 300.29 Eastern Pacific fisheries management.

(a) *Notification of IATTC recommendations.* The Regional Administrator will directly notify owners or agents of U.S. tuna vessels of any fishery management recommendations made by the IATTC and approved by the Department of State that will affect fishing or other activities by U.S. parties with fishery interests in the Convention Area. As soon as practicable after such notification, the Regional Administrator will announce approved IATTC recommendations in the **Federal Register**.

(b) *Tuna quotas.* (1) Fishing seasons for all tuna species begin on January 1 and end either on December 31 or when NMFS closes the fishery for a specific species.

(2) The Regional Administrator may close the U.S. fishery for yellowfin, bigeye, or skipjack tuna or any other tuna species in the Convention Area or portion of the Convention Area when advised by the Director of Investigations of the IATTC that the associated quota has been or is projected to be reached. Any such closure may include:

(i) An allowance for an incidental catch that may be landed while fishing for other tuna species;

(ii) A prohibition on the further setting of specified gear types on floating objects by U.S. vessels in the Convention Area;

(iii) Provisions for vessels that are at sea during an announced closure to fish unrestricted until the fishing trip is completed;

(iv) Provisions for vessels at sea with an observer on board during any closure to land fish unrestricted if the landing occurs after December 31; or

(v) Other measures to ensure that the conservation and management measures of the IATTC are achieved.

(3) The Regional Administrator will announce any such closures directly to the owners or agents of U.S. vessels who are fishing in or are eligible to fish in the Convention Area.

(4) As soon as practicable after being advised of the quota attainment or

projection under paragraph (b)(2) of this section, the Regional Administrator will publish an announcement of the closure in the **Federal Register**.

(c) *Use of tender vessels.* No person subject to these regulations may use a tender vessel in the Convention Area.

(d) *Transshipments at sea.* No person subject to these regulations may transship purse seine-caught tuna from one vessel to another vessel at sea within the Convention Area.

PART 300—[AMENDED]

6. In addition to the amendments set forth under the authority of 16 U.S.C. 773 *et seq.*; 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 973–973r; 16 U.S.C. 2431 *et seq.*; 16 U.S.C. 3371–3378; 16 U.S.C. 3636(b); 16 U.S.C. 5501 *et seq.*; and 16 U.S.C. 1801 *et seq.*, in part 300, revise all references to “Regional Director” to read “Regional Administrator”.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 080999J]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 10, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-

Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 TAC of northern rockfish in the Central Regulatory Area of the Gulf of Alaska was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 4,150 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii). The directed fishery for northern rockfish in the Central Regulatory Area was closed under § 679.20(d)(iii) on July 19, 1999 (64 FR 39090, July 21, 1999), and reopened on August 6, 1999 (64 FR 43296, August 10, 1999).

On July 19, 1999 (64 FR 39090, July 21, 1999), in accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), determined that the 1999 TAC for northern rockfish would be reached. Therefore, the Regional Administrator established a directed fishing allowance of 3,650 mt, and set aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of northern rockfish for the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: August 10, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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