

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 300**

[Docket No. 090130104–9910–01]

RIN 0648–AX60

**International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2009–2011 and Turtle Mitigation Requirements in Purse Seine Fisheries**

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

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

**SUMMARY:** NMFS proposes regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (Act) to implement certain decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). Those decisions require that the members of the WCPFC, including the United States, take certain measures with respect to their purse seine fisheries in the area of competence of the WCPFC, which includes most of the western and central Pacific Ocean (WCPO). This action is necessary for the United States to satisfy its international obligations under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

**DATES:** Comments must be submitted in writing by June 22, 2009.

**ADDRESSES:** You may submit comments, on this proposed rule, identified by 0648–AX60, and the regulatory impact review (RIR) prepared for the proposed rule by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal e-Rulemaking portal, at <http://www.regulations.gov>

- Mail: William L. Robinson, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Include the identifier “0648–AX60” in the comments.

Instructions: All comments received are part of the public record and generally will be posted to <http://www.regulations.gov> without change.

All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter “N/A” in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

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 proposed rule.

Copies of the RIR and copies of the environmental assessment (EA) prepared under authority of the National Environmental Policy Act are available at [http://www.fpir.noaa.gov/IFD/ifd\\_documents\\_data.html](http://www.fpir.noaa.gov/IFD/ifd_documents_data.html) or may be obtained from William L. Robinson, Regional Administrator, NMFS PIRO (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Tom Graham, NMFS PIRO, 808–944–2219.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

This proposed rule is also accessible at <http://www.gpoaccess.gov/fr>.

**Background on the Convention and the WCPFC**

The Convention entered into force in June 2004. The full text of the Convention can be obtained from the WCPFC website at: <http://www.wcpfc.int/convention.htm>. The Convention Area comprises the majority of the western and central Pacific Ocean (WCPO). In the North Pacific Ocean the eastern boundary of the Convention Area is at 150 W. longitude. A map showing the boundaries of the Convention Area can be found on the WCPFC website at: <http://www.wcpfc.int/pdf/Map.pdf>. The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS, and also has provisions related to non-target, associated, and dependent species in such fisheries.

The WCPFC, established under the Convention, is comprised of the Members, including Contracting Parties to the Convention and fishing entities that have agreed to be bound by the regime established by the Convention.

Other entities that participate in the WCPFC include Participating Territories and Cooperating Non-Members. Participating Territories participate with the authorization of the Contracting Parties with responsibility for the conduct of their foreign affairs. Cooperating Non-Members are identified by the WCPFC on a yearly basis. In accepting Cooperating Non-Member status, such States agree to implement the decisions of the WCPFC in the same manner as Members.

The current Members of the WCPFC are Australia, Canada, China, Chinese Taipei (Taiwan), Cook Islands, European Community, Federated States of Micronesia, Fiji, France, Japan, Kiribati, Korea, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Tonga, Tuvalu, United States, and Vanuatu. The current Participating Territories are French Polynesia, New Caledonia and Wallis and Futuna (affiliated with France); Tokelau (affiliated with New Zealand); and the Territory of American Samoa, the Commonwealth of the Northern Mariana Islands and the Territory of Guam (affiliated with the United States of America). The Cooperating Non-Members for 2009 are Belize, El Salvador, Indonesia, Mexico, and Senegal.

**International Obligations of the United States Under the Convention**

The United States ratified the Convention and, in doing so, became a Contracting Party to the Convention and a Member of the WCPFC in 2007. From 2004 until that time, the United States participated in the WCPFC as a Cooperating Non-Member. As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC in a legally binding manner. The Act, enacted in 2007, 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 (USCG) 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 WCPFC. The authority to promulgate regulations has been delegated to NMFS.

**WCPFC Decisions Regarding Bigeye Tuna, Yellowfin Tuna, and Sea Turtles in Purse Seine Fisheries**

At its Fifth Regular Session, in December 2008, the WCPFC adopted

Conservation and Management Measure (CMM) 2008–01, “Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean.” The CMM, available with other decisions of the WCPFC at <http://www.wcpfc.int/decisions.htm>, places certain obligations on the WCPFC Members, Participating Territories, and Cooperating Non-members (collectively, CCMs). The CMM is based in part on the findings by the WCPFC that the stock of bigeye tuna (*Thunnus obesus*) in the WCPO is experiencing a fishing mortality rate greater than the rate associated with maximum sustainable yield and that the stock of yellowfin tuna (*Thunnus albacares*) in the WCPO is experiencing a fishing mortality rate close to the rate associated with maximum sustainable yield. The Convention calls for the WCPFC to adopt measures designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors. Accordingly, the objectives of CMM 2008–01 include achieving, over the 2009–2011 period, a reduction in fishing mortality on bigeye tuna in the WCPO of at least 30 percent and no increase in fishing mortality on yellowfin tuna in the WCPO, relative to a specified historical baseline.

CMM 2008–01 includes provisions that: (1) for 2009–2011, establish purse seine fishing effort limits on the high seas in the Convention Area and require CCMs to implement compatible measures in their respective areas of national jurisdiction; (2) in the period 2009–2011, prohibit deploying and servicing fish aggregating devices (FADs) or associated electronic devices, and prohibit purse seine fishing on schools in association with FADs on the high seas in the Convention Area during specified periods each year (August 1 through September 30 in 2009 and July 1 through September 30 in 2010 and 2011; hereafter, “FAD prohibition periods”) and require CCMs to implement compatible measures in their respective areas of jurisdiction; (3) in 2010 and 2011, close two specific high seas areas within the Convention Area to purse seine fishing, unless the WCPFC decides otherwise at its regular annual session in December 2009; (4) in 2010 and 2011, require that all bigeye tuna, yellowfin tuna, and skipjack tuna be retained on board purse seine vessels in the Convention Area up to the point of first landing or transshipment, with certain exceptions and contingent on the WCPFC Regional Observer Programme (WCPFC ROP) being able to

provide 100 percent observer coverage; and (5) in 2009, require that WCPFC ROP or national observers be on board all purse seine vessels fishing in the Convention Area during the FAD prohibition period, and in 2010 and 2011, require that WCPFC ROP observers be on board all purse seine vessels fishing in the Convention Area.

The WCPFC also adopted CMM 2008–03, “Conservation and Management of Sea Turtles.” The CMM prescribes specific measures to be used to handle, resuscitate, and release sea turtles captured in HMS fisheries, and for purse seine vessels, requires that certain procedures be used to deal with sea turtles encircled and entangled in purse seines or FADs, including carrying and using dip nets.

### Proposed Action

The proposed rule would include the following elements:

#### (1) Fishing Effort Limits

The proposed rule would establish a limit, from 2009 through 2011, on the number of fishing days per year that may be spent by the U.S. purse seine fleet on the high seas and in areas under U.S. jurisdiction (including the U.S. exclusive economic zone, or EEZ) within the Convention Area. Paragraph 10 of CMM 2008–01 gives the United States the choice of using the 2004 level or the average 2001–2004 level as the baseline for the limits on the high seas. Paragraphs 12 and 18 of CMM 2008–01 require the United States to take measures to reduce purse seine fishing mortality on bigeye tuna in the U.S. EEZ, in a way that is compatible with certain measures that the Parties to the Nauru Agreement (PNA) are to implement within their respective areas of national jurisdiction (as prescribed in Paragraphs 11 and 17 of the CMM). The pertinent measures to be implemented by the PNA are described in the following paragraph.

The PNA have established, and under CMM 2008–01 are required to implement, the Vessel Day Scheme (VDS), which limits the number of days fished by purse seine vessels in the EEZs of the PNA to no greater than 2004 levels and provides for the allocation of the limit among the PNA. The VDS defines a fishing day as any calendar day, or part of calendar day, during which a purse seine vessel is outside of a port, except when the vessel is not undertaking fishing activities (i.e., when all fishing gear is stowed). For the purpose of this proposed rule, “fishing day” would be defined in similar manner. The PNA VDS specifies rolling three-year management periods. The

rolling three-year management periods function by having the limit on the number of fishing days set for each of the years in the initial three-year management period. In theory, before the end of the first year, the fishing limit is then to be set for the fourth year, and before the end of the second year, the fishing limit is set for the fifth year, and so on, so that the maximum allowable fishing days are always established for three years in advance. Transfer of a certain number of fishing days between management years by individual PNA is allowed (up to 100 percent of the days from another year in the same three-year management period; up to 30 percent of the days from the final year of the preceding management period). Allocated fishing days may also be transferred, within specified limits, among PNA.

Paragraph 7 of CMM 2008–01 provides that determinations of effort levels for the purpose of implementing the CMM shall include fishing rights under existing regional fisheries arrangements or agreements that were registered with the WCPFC by December 2006 in accordance with CMM 2005–01, “Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean,” provided that the number of licenses authorized under such arrangements does not increase. The South Pacific Tuna Treaty (SPTT) is such an agreement, and the United States has registered the SPTT with the WCPFC in accordance with CMM 2005–01. The number of licenses allowed for the U.S. purse seine fleet under the SPTT is 45, five of which are reserved for vessels engaged in joint ventures with Pacific Island Parties to the SPTT, and these numbers have not increased. The licensing requirements of the SPTT do not apply to the U.S. EEZ, but the area of application of the SPTT does include portions of the U.S. EEZ. Since the inception of the SPTT, all U.S. purse seine vessels that have been used to fish in the U.S. EEZ in the WCPO have been licensed under the SPTT. In other words, the set of vessels used to fish in the U.S. EEZ in the WCPO has been identical to the set of vessels used to fish on the high seas and in foreign EEZs in the WCPO under the terms of the SPTT, and consequently, all such vessels have been effectively managed as part of the SPTT-governed U.S. purse seine fleet. For these reasons, the number of non-joint venture licenses authorized under the SPTT, 40, is used as the basis for the proposed fishing effort limits for both the high seas and

the U.S. EEZ within the Convention Area.

This baseline of 40 vessels is used to derive the proposed fishing effort limits, expressed in terms of fishing days, by determining the average number of fishing days spent per vessel in the appropriate baseline period, and multiplying that number by 40 vessels. The numbers of days fished during the baseline periods were determined from the best available historical operational data from the U.S. purse seine fleet, as reported on regional purse seine logsheets. For both the high seas and the U.S. EEZ within the Convention Area, average fishing effort per vessel was greater in 2004 than during 2001–2004, so the 2004 levels are used for both areas. For the high seas in the Convention Area, the estimated average number of fishing days spent per vessel during 2004 (when 21 vessels were active in that area) was 50.76. For the U.S. EEZ in the Convention Area, the estimated average number of fishing days spent per vessel during 2004 (when 20 vessels were active in that area) was 13.95. Therefore, the proposed limit would be 2,030 fishing days per year (but not necessarily applied on an annual basis) for the high seas and 558 fishing days per year for the U.S. EEZ, or a total of 2,588 fishing days per year. If any vessels enter the fishery with any of the five licenses reserved for vessels engaged in joint ventures with the Pacific Island Parties to the SPTT, the limit may be adjusted accordingly.

To accommodate the need for operational flexibility in the event of inter-annual variability in the spatial and temporal distribution of optimal fishing grounds and times, the proposed rule would implement the fishing effort limit on three different time scales: First, there would be a limit of 7,764 fishing days (3 times the base of 2,588

fishing days) for the entire three-year 2009–2011 period. Second, there would be a limit of 6,470 fishing days (2.5 times the base of 2,588 fishing days) for each of the two-year periods 2009–2010 and 2010–2011. Third, there would be a limit of 3,882 fishing days (1.5 times the base of 2,588 fishing days) for each of the one-year periods 2009, 2010, and 2011. This approach would allow greater fishing effort in any given year than would be allowed under a strict annual limit, yet ensure that total fishing effort over the three-year period does not exceed the WCPFC-mandated limit for that period.

Once NMFS determines during any of those time periods that, based on information collected in vessel logbooks and other sources, the limit is expected to be reached by a specific future date, NMFS would issue a notice announcing the closure of the purse seine fishery in the Convention Area on the high seas and in areas of U.S. jurisdiction starting on that specific future date and will remain closed until the end of the applicable time period. Upon closure of the fishery, it would be prohibited to use a U.S. purse seine vessel to fish in the Convention Area on the high seas or in areas under U.S. jurisdiction through the end of the applicable time period. NMFS would publish the notice at least seven calendar days before the effective date of the closure to provide fishermen advance notice of the closure.

### *(2) FAD Prohibition Periods*

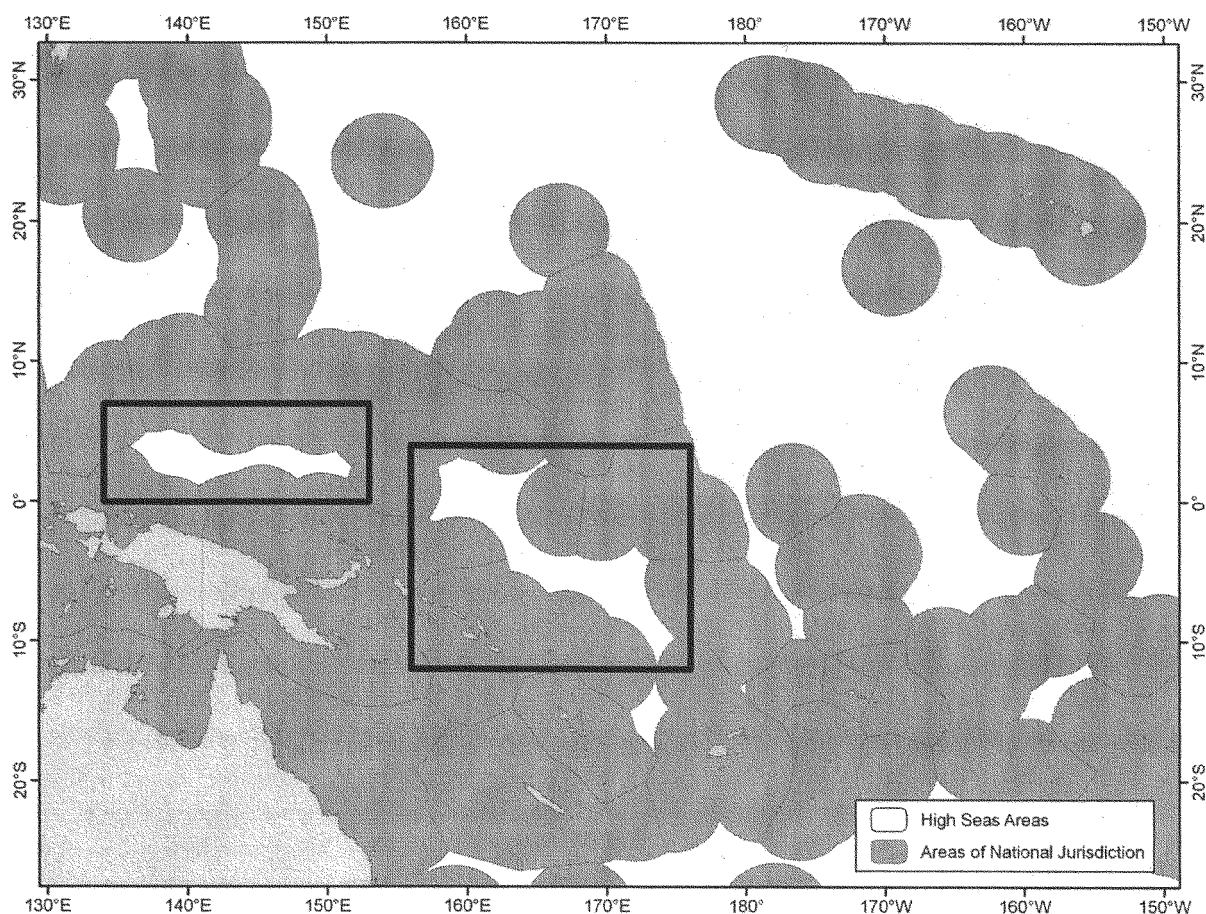
The proposed rule would establish periods in each of the years 2009, 2010, and 2011 during which it would be prohibited to set purse seines around FADs, deploy FADs, and service FADs or their associated electronic equipment in the convention area. Also, to implement the provision in CMM 2008–01 to prohibit fishing “on schools in

association with FADs”, it would be prohibited during these periods to set a purse seine within one nautical mile of a FAD or to set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD, such as by setting the purse seine in an area from which a FAD has been moved or removed within the previous eight hours or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD. FADs would be defined to include both artificial and natural floating objects that are capable of aggregating fish. In 2009, the FAD prohibition period would be August 1 through September 30. In 2010 and 2011, it would be July 1 through September 30.

### *(3) High Seas Area Closures*

The proposed rule would establish two areas closed to fishing by U.S. purse seine vessels, effective January 1, 2010 through December 31, 2011. The areas would be the two areas of high seas within the Convention Area that are depicted on the map in Figure 1. In CMM 2008–01, the WCPFC has reserved the option of reversing its adoption of the closed areas at its regular annual session in December 2009. If such a decision occurs, NMFS will take appropriate action to rescind any closed areas that are established by regulation.

Figure 1. Proposed high seas closed areas. Areas of high seas are indicated in white; areas of claimed national jurisdiction, including territorial seas, archipelagic waters, and exclusive economic zones, are indicated in dark shading. Areas that would be closed to purse seine fishing are all high seas areas within the two rectangles bounded by the bold black lines. The coordinates of the two rectangles are set forth in the proposed regulation. This map displays indicative maritime boundaries only.



#### (4) Catch Retention

The proposed rule would prohibit discarding bigeye tuna, yellowfin tuna, or skipjack tuna (*Katsuwonus pelamis*) from a U.S. purse seine vessel at sea within the Convention Area. Exceptions would be provided for fish that are unfit for human consumption for reasons other than their size, for the last set of the trip if there is insufficient well space to accommodate the entire catch, and for cases of serious malfunction of equipment that necessitate that fish be discarded. This element of the proposed rule would become effective no earlier than January 1, 2010, and only upon NMFS' determination that an adequate number of WCPFC-approved observers are available for the purse seine vessels of all WCPFC CCMs as necessary to ensure compliance by such vessels with the catch retention requirement. Once it makes that determination, NMFS would announce the effective date of the requirement in a notice published in the **Federal Register**. The requirement would then remain in effect through December 31, 2011.

#### (5) Observer Coverage

The proposed rule would require that U.S. purse seine vessels carry observers

deployed as part of the WCPFC ROP or deployed by NMFS on all trips in the Convention Area from August 1 through September 30, 2009 (the FAD prohibition period). It would also require, effective January 1, 2010, through December 31, 2011, that U.S. purse seine vessels carry WCPFC-approved observers on all trips in the Convention Area. These observer requirements would not apply to trips that take place exclusively within areas under the jurisdiction of the United States, including the U.S. EEZ and U.S. territorial sea, or any other single nation. They also would not apply in cases where NMFS has determined that an observer is not available.

#### (6) Sea Turtle Interaction Mitigation

The proposed rule would require that owners and operators of U.S. purse seine vessels operating in the Convention Area carry specific equipment and use specific measures to disentangle, handle, and release sea turtles that are encountered in fishing gear, including purse seines and FADs. The required equipment would be a dip net with specified minimum design standards. The required measures would include: immediately releasing sea turtles that are observed enclosed in

purse seines; disentangling sea turtles that are observed entangled in purse seines or FADs; stopping net roll until a sea turtle is disentangled from a purse seine; resuscitating sea turtles that appear dead or comatose; and releasing sea turtles back to the ocean in a specified manner. Unlike all the other elements of the proposed rule, this element would be effective indefinitely.

#### Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Western and Central Pacific Fisheries Convention Implementation Act and other applicable laws, subject to further consideration after public comment.

NMFS prepared an EA that analyzes the proposed rule's expected impacts on the human environment. In the EA, NMFS compared the effects of the proposed rule and four alternatives to the proposed rule, including the No-Action or baseline alternative and three action alternatives. Although the alternatives would likely result in slightly different environmental impacts, all alternatives would have only minor impacts on bigeye tuna and other living marine resources in the WCPO. Overall, the expected impacts

on bigeye tuna and other living marine resources from the proposed rule or any of the action alternatives are expected to be similar and generally beneficial. The action alternatives focus on analyzing a range of alternatives for the manner in which the limit on the number of fishing days would be implemented. NMFS initially considered two alternatives to the FAD prohibition period element of the proposed rule that were eliminated from detailed consideration. For the other elements of the proposed rule, NMFS was not able to identify any alternatives that were reasonable and feasible. The proposed rule is neither the most restrictive nor the least restrictive manner in which to implement the limit on the number of fishing days. Rather, the proposed rule seeks to establish a balance between the needs of fishery participants and the effects on the human environment.

The effects on the human environment from the proposed rule are expected to be minor for the following reasons. First, the duration of the proposed rule (with the exception of the sea turtle mitigation requirements) would be limited to three years, after which, unless similar or more restrictive future actions are taken, conditions would likely rebound to conditions similar to those under the No-Action or baseline alternative. Second, the proposed rule would have relatively minor effects on the conduct or catches of the U.S. purse seine fleet, and consequently only minor effects on the total fishing mortality rates of the stocks captured by the fleet, including bigeye tuna and yellowfin tuna in the WCPO. However, other present and reasonably foreseeable future actions for the conservation and management of HMS could cause similar beneficial effects, so overall, the cumulative impacts on the affected environment could be greater than if the proposed rule were implemented in isolation. Specifically, implementation by the United States of the provisions of CMM 2008–01 applicable to longline vessels (which NMFS intends to do via one or more separate rulemakings) and implementation by other CCMs of the provisions of the CMMs would enhance the beneficial impacts to bigeye tuna, yellowfin tuna, and other living marine resources. If the WCPFC adopts (and CCMs implement) similar or more restrictive measures after the three-year duration of CMM 2008–01, the beneficial impacts would be further enhanced (e.g., there could be a greater likelihood of attaining the objectives of CMM 2008–01).

The economic impacts of the proposed rule are addressed in the EA

only insofar as they are related to impacts to the biophysical environment. They are addressed more fully in the RIR and IRFA. A copy of the EA is available from NMFS (see **ADDRESSES**).

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

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

There would be no disproportionate economic impacts between small and large vessels resulting from this rule. Furthermore, there would be no disproportionate economic impacts, among all vessels, based on vessel size, gear, or homeport.

#### *Estimated Number of Small Entities Affected*

The proposed rule would apply to owners and operators of U.S. purse seine vessels used for fishing in the Convention Area. The number of affected vessels is the number licensed under the SPTT. The current number of licensed vessels is 39, but the number could soon reach the maximum number of licenses available under the Treaty (excluding joint-venture licenses), which is 40. Based on limited financial information available on the purse seine fleet, NMFS believes that as many as 10 of the affected vessels are owned by small entities (i.e., they are business entities with gross annual receipts of no more than \$4.0 million).

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

The proposed rule would not establish any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). Affected vessel owners and operators would have to comply with all the proposed requirements, as described at the beginning of this section in the preamble. Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess, except that the proposed sea turtle handling and release requirements might require some training of crew members, as described further below.

#### *Economic Impacts to Small Entities*

##### *(1) Fishing Effort Limits*

Owners and operators of purse seine vessels would have to cease fishing in the Convention Area in areas under U.S. jurisdiction and on the high seas if and when the fishery is closed as a result of the established effort limit being reached in one of the applicable periods (any of the calendar years 2009–2011, either of the two-year periods 2009–2010 and 2010–2011, or the three-year period 2009–2011). They would have to do so for the remainder of the calendar year. Closure of the fishery could cause foregone fishing opportunities and associated economic losses. The likelihood of the fishery being closed in any of the applicable periods and the economic losses a closure would bring cannot be projected with certainty.

Two factors potentially important with respect to the likelihood of the limit being reached are per-vessel fishing effort and climate/ocean conditions. Because the effort limits would be set at a level that would be expected from 40 vessels, which is the expected fleet size under no-action, the limits may not have a high likelihood of being reached. However, because the proposed limits are based on average per-vessel fishing effort from 2004, if per-vessel effort levels in the no-action 40-vessel fleet are greater than that historical level, the likelihood of the limit being reached would be that much greater. With respect to climatic and oceanic conditions, the spatial distribution of the fleet's fishing effort is strongly influenced by conditions associated with El Niño-Southern Oscillation (ENSO) patterns. The eastern areas of the WCPO have tended to be comparatively more attractive to the fleet during El Niño events, when warm water spreads from the western Pacific to the eastern Pacific. Consequently, the areas subject to the proposed limit appear to be somewhat more important fishing grounds during El Niño events. If El Niño conditions occur during 2009–2011 (the effective dates of this element of the proposed rule), the likelihood of the fishery being closed, along with any associated economic costs, would be slightly greater than if such an event does not occur. However, the proposed limits have been designed to mitigate that likelihood and the associated costs (not just in anticipation of El Niño events, but to accommodate the spatial-temporal variations in optimal fishing grounds that would be expected from any number of factors). Specifically, the most restrictive limit (in terms of allowable fishing days per unit of time) would be established for

the entire three-year period. Less restrictive limits would be established for the one-year and two-year periods within the overall 2009–2011 period. This would allow some of the overall allowable effort for the 2009–2011 period to be concentrated to a certain extent within shorter sub-periods, such as during El Nino events.

The area that would be closed constitutes a relatively small portion of the fishing grounds available to, and typically used by, the U.S. purse seine fleet. Unpublished NMFS data indicate that, on average, during 1997 through 2007, fishing effort in the U.S. EEZ and on the high seas made up about 30 percent of the annual total, and percentage among those years ranged from 22 to 40. In the event of a closure, affected vessels could continue to be used in the Convention Area in foreign EEZs, to the extent authorized. Given that foreign EEZs in the Convention Area have collectively received the majority of the U.S. purse seine fleet's fishing effort (60 to 78 percent in the years 1997–2007), the cost associated with being limited to such areas would likely not be substantial. Nonetheless, the closure of any fishing grounds would be expected to bring some (unquantifiable) costs to affected entities (e.g., because revenues per unit of fishing effort in the open area might, during the closed period, be lower than in the closed area), and as indicated in the preceding paragraph, the losses would vary depending on where the best fishing grounds are during the closed period, which is dependent in part on ENSO-related conditions.

The effort limit could affect the temporal distribution of fishing effort in the U.S. purse seine fishery. Since the limit would be competitive that is, not allocated among individual vessels, vessel operators might have an incentive to fish harder in the affected area earlier in a given limit-period (e.g., one of the calendar years 2009–2011) than they otherwise would. To the extent such a shift occurs, it could affect the seasonal timing of fish catches and deliveries to canneries. If, for example, deliveries from the fleet were substantially concentrated early in the year, it could adversely affect prices during that period. However, as discussed in the preceding paragraphs, the majority of fishing effort is expected to occur outside the area subject to the proposed limit, so the timing of catches and deliveries would not be appreciably impacted by a “race-to-fish” in the area subject to the limit. Furthermore, the timing of cannery deliveries by the U.S. fleet alone is unlikely to have an appreciable impact on prices, since the

canneries buy from the fleets of multiple nations. A race to fish could bring costs to affected entities if it causes vessel operators to forego vessel maintenance or to fish in weather or ocean conditions that it otherwise would not. This could bring costs in terms of human safety as well as the economic performance of the vessel. A race-to-fish effect might also be expected in the time period between when a closure of the fishery is announced and when it is actually closed, which would be at least seven calendar days. For the reasons stated above, any such effect and its adverse impacts are expected to be minor. In addition, there is no evidence that economies of scale will favor those vessels that are defined as large over small vessels or vice versa when effort is constrained by these measures.

#### (2) FAD Prohibition Periods

The prohibitions on fishing in association with FADs during specified periods in each of the years 2009–2011 (August and September in 2009 and July through September in 2010 and 2011) would substantially constrain the manner in which purse seine fishing could be conducted during those periods. The costs associated with these constraints cannot be projected, but the fleet's historical use of FADs can give a qualitative indication of the costs. In the years 1997–2007, the proportion of sets made on FADs in the U.S. purse seine fishery ranged from less than 40 percent in some years to more than 90 percent in others. The importance of FADs in terms of profits appears to be quite variable over time, and is probably a function of many factors, including fuel prices (e.g., 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 small skipjack tuna than unassociated sets, might be more attractive and profitable when canneries are not rejecting small fish). Thus, the costs of implementing the FAD prohibition periods would depend on a variety of factors. The fact that the fleet has typically made a large portion of its sets on FADs suggests that prohibiting the use of FADs for two to three months each year would bring substantial costs to affected entities. Given current market conditions, it seems unlikely that any affected entities would choose not to fish during the FAD prohibition periods rather than fish without the use of FADs. However, as described below for element (5) on observer coverage, affected vessels would also bear costs associated with having to carry an observer during the 2009 FAD

prohibition period. To mitigate the costs that the FAD prohibition periods would bring, vessel operators might choose to schedule their routine vessel maintenance during a portion of those periods.

#### (3) High Seas Area Closures

Closure of the two areas of high seas in the Convention Area in 2010 and 2011 would foreclose fishing opportunities and bring associated economic costs to affected entities. Those costs cannot be quantified, but because the affected areas constitute a relatively small portion of the fleet's traditional fishing grounds, the closures would not be expected to have a large effect on the ability of vessels to fish and generate revenue. NMFS unpublished data from vessel logbooks indicate that from 1997 through 2007, the proportion of the fleet's total annual catch that was taken from the two areas collectively was about 10 percent, and ranged from about 3 to 20 percent. Total fishing effort by particular vessels would likely be unaffected, but the spatial distribution of effort would necessarily shift out of the affected areas into what would be less attractive, and in some cases, less profitable, fishing grounds.

#### (4) Catch Retention

Implementing the catch retention requirement would bring costs associated with having to fill well space with less valuable, and in some cases, unmarketable, product. Those costs cannot be quantified, but historical tuna discard rates in the U.S. purse seine fishery give a qualitative indication. Based on vessel observer data for the U.S. EEZ for the years 1997–2001, annual estimated discard rates (by weight) of bigeye tuna, skipjack tuna, and yellowfin tuna averaged 9 percent, 13 percent, and 6 percent, respectively.

The compliance costs of the catch retention requirement would likely be different for vessels that tend to operate out of Pago Pago and deliver their catch to the canneries in Pago Pago versus vessels that transship most of their catch to other vessels. For vessels in the former category, which have to steam relatively far from the fishing grounds in order to land their fish, a fishing trip typically only ends when the fish holds are full in order to maximize revenue during a given trip. Revenues and profits for these vessels are therefore strongly dependent on the capacity of their fish wells and on the value of fish per unit of well space. There have been occasions where the canneries have charged vessel operators to unload small fish. If that occurs with small fish that



under this proposed rule are retained that otherwise would not be, vessel owners and operators would bear direct economic costs. For vessels that tend to transship their catches at ports near the fishing grounds, well space is a less important constraint on profits, so the economic impacts of this requirement on these vessels would likely be less.

#### (5) Observer Coverage

Compliance costs are first estimated for 2009, in which vessels would be required to carry an observer during the FAD prohibition period, from August 1 through September 30, and then estimated for 2010 and 2011, when vessels would be required to carry observers on all trips.

Under the current 20 percent observer coverage requirement under the SPTT, vessels that operate out of Pago Pago, American Samoa, typically carry an observer on about one trip per year. The observers required under the terms of the SPTT are deployed by the Pacific Islands Forum Fisheries Agency (FFA), which acts as the SPTT Administrator on behalf of the Pacific Island Parties to the SPTT. Under an agreement between the United States and the Pacific Island Parties to the SPTT, the observers deployed for the purpose of meeting this new WCPFC-mandated observer requirement would also be deployed by the FFA. Under the SPTT, the FFA dictates the deployment of observers and the U.S. facilitates their placement on vessels. Deployment is done in a way such that vessel operators have essentially no control over which trips will be observed.

In 2009, if an SPTT-mandated observer is deployed by the FFA on a trip that includes the FAD prohibition period, that would satisfy this new WCPFC-mandated observer requirement, and there would be no new compliance costs for the affected vessel in 2009. If, on the other hand, an SPTT-mandated observer is not deployed on the trip or trips that include the 2009 FAD prohibition period, then the affected vessel would have to carry an observer (assuming an observer is available) on that trip or trips as well as on any trips that it carries an SPTT-mandated observer. In that case, the new compliance costs would be as follows:

The owner and operator of the affected vessel would be responsible for both the cost of providing food, accommodation, and medical facilities to observers (termed “observer accommodation costs” here), and certain costs imposed by the FFA for the operation of its observer program as it is applied to the U.S. purse seine fleet

(termed “observer deployment costs” here). For the purpose of estimating these costs, it is assumed that an affected vessel would schedule its trips such that it takes one trip during the 61-day FAD prohibition period and that the trip lasts for the duration of the period (vessel logbook data indicate average trip lengths of more than 70 days in 2003 and 2004, but the averages in 2007 and 2008 were less than 40 days; SPC 2009a). If the timing or duration of an affected vessel’s trips differs from these assumptions, the costs it would bear would vary accordingly from the estimates given in the following paragraphs.

Observer accommodation costs are expected to be about \$20 per day, so total observer accommodation costs in 2009 for an affected vessel would be \$1,400.

Based on the budget for the FFA observer program for the 2008–2009 SPTT licensing period, which is based on a 20 percent coverage rate, observer deployment costs are approximately \$8,630 per vessel per year, or per observed trip. According to the budget, about 28 percent of those costs, or \$2,416, are fixed costs (as opposed to variable, or per-trip, costs). It is not known how the fixed component of costs would change with the increase in coverage from the current 20-percent level. Assuming that fixed costs do not change at all, the cost for an additional observed trip in 2009 would be about \$6,200. If, on the other hand, fixed costs increase in proportion to the number of trips observed, the cost for an additional observed trip in 2009 would be about \$8,600.

In 2010 and 2011, observer coverage would be required on all trips. Assuming, based on recent logbook data, that an affected purse seine vessel spends 285 days at sea each year, and, as described above, \$20 per observed-sea-day in observer accommodation costs, annual observer accommodation costs at 100 percent coverage would be about \$5,700 per vessel. Of these estimated costs, 80 percent, or \$4,600 per vessel, would be “new” annual costs associated with this proposed requirement.

Observer deployment costs in 2010 and 2011 are estimated based on the FFA observer program budget for the 2008–2009 SPTT licensing period, as done for 2009 in the preceding paragraphs. If fixed costs do not change at all in response to the increased observer coverage rate, the annual cost per vessel at 100 percent coverage would be about \$33,400. If fixed costs increase in proportion to the level of observer coverage, the annual cost per

vessel at 100 percent coverage would be about \$43,200. Of these estimated per-vessel costs, 80 percent, or \$26,700 to \$34,500, would be new annual costs associated with this proposed requirement.

In summary, in 2009, affected vessels would be subject to compliance costs of up to about \$7,600 to \$10,000 (\$1,400 in observer accommodation costs plus \$6,200 to \$8,600 in observer deployment costs). In each of 2010 and 2011, affected vessels would be subject to compliance costs of up to about \$31,300 to \$39,100 (\$4,600 in observer accommodation costs plus \$26,700 to \$34,500 in observer deployment costs). Detailed up-to-date information on revenues and costs in the fleet are not available, but a 1998 study found average gross revenues per vessel to be about \$4.7 million, which is equivalent to about \$6.1 million in 2009 dollars. Thus, the expected observer-related compliance costs are roughly 0.5 to 0.6 percent of average gross revenues.

As described above for element (2) on the FAD prohibition periods, to mitigate the costs associated with the 2009 FAD prohibition period, including the observer-related costs identified here, vessel operators might choose to schedule their routine vessel maintenance during a portion of that period.

#### (6) Sea Turtle Interaction Mitigation

The costs of complying with the proposed sea turtle interaction mitigation requirements would include the costs of obtaining the required dip net, ensuring that crew members are adequately trained to execute the required mitigation measures, and the time and labor required to handle and release sea turtles in the required manner (potentially at the expense of fishing time). A dip net with the minimum required specifications is estimated to cost no more than \$100. Training costs cannot be quantified, but because the proposed requirements are relatively simple, crew members can probably become sufficiently skilled through informal training using educational materials provided by NMFS. Training costs are consequently expected to be minor. Handling and releasing sea turtles in the required manner might involve more time on the part of crew members than is currently spent dealing with sea turtles that are entangled or encountered. However, such incidents occur only rarely in the fishery, so the costs of labor and lost fishing time are expected to be minor.

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

NMFS has not identified any Federal regulations that duplicate, overlap with, or conflict with the proposed regulations, with the exception of the proposed observer requirements. U.S. purse seine vessels are subject to regulations issued under authority of the South Pacific Tuna Act of 1988 (SPTA; 16 U.S.C. 973–973r), at 50 CFR 300.43. Those regulations require that operators and crew members of vessels operating pursuant to the SPTT allow and assist any person identified as an observer by the Pacific Island Parties to the SPTT to board the vessel and conduct and perform specified observer functions. Under the terms of the SPTT, U.S. purse seine vessels carry such observers on approximately 20 percent of their trips. The proposed observer requirement would overlap with the existing regulations in that carrying an observer pursuant to 50 CFR 300.43 would satisfy the proposed requirement that an observer be carried during the FAD prohibition period of 2009. The proposed requirement would not duplicate or conflict with existing regulations.

### *Alternatives to the Proposed Rule*

NMFS has identified and considered several alternatives to the proposed rule. The alternatives are limited to the way in which the fishing effort limits would be implemented.

One alternative differs from the proposed rule only in that the fishing effort limits would be allocated among individual vessels. This would likely alleviate any adverse impacts of the race-to-fish that might occur as a result of establishing the competitive fishing effort limits as in the proposed rule. As described in the previous paragraphs, those potential impacts include lower prices for landed product and risks to performance and safety stemming from fishing during sub-optimal times. Those impacts, however, are expected to be minor, so this alternative is not preferred.

Another alternative would differ from the proposed rule only in that there would be a single limit of 7,764 fishing days (three times the fishing effort rate of 2,588 fishing days per year) for the entire three-year period 2009–2011. This would provide slightly more operational flexibility to affected vessels than the proposed rule, which could bring lower compliance costs. However, the lack of any limits for a given year would bring the potential for a longer closed period (e.g., during a substantial part of 2011) than would likely occur

under the proposed rule (under which relatively brief closures might be expected in one or more of the years 2009–2011). To the extent that continuous fishing and continuity of supply are important for the fishery, several short closures might cause less adverse economic impacts than a single long closure, and for this reason, this alternative is not preferred. For example, with a brief closure each year, vessel owners and operators might be able to schedule routine vessel maintenance during the closed periods and mitigate the losses of not being able to fish. This would be more difficult to do during a longer closed period. In any case, as described in the preceding paragraphs, because the majority of the fleet's traditional fishing grounds would not be subject to the limit or the closure, the potential losses caused by a closed period however short or long are likely to be relatively minor.

Another alternative would establish separate fishing effort limits for the high seas and for areas under U.S. jurisdiction and separate limits for each of the SPTT licensing years (which run from June 15 through June 14) during 2009–2011. In accordance with the baseline effort levels specified in CMM 2008–01, the limits would be 2,030 fishing days on the high seas and 558 fishing days in areas under U.S. jurisdiction. Because this alternative would provide less operational flexibility for affected purse seine vessels, the limits would be more constraining than those established under the proposed rule, and consequently more costly. It is not preferred for that reason.

The alternative of taking no action at all is not preferred because it would fail to accomplish the objective of the Act or satisfy the international obligations of the United States as a Contracting Party to the Convention.

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

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

Dated: May 27, 2009.

**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 O, which was proposed to be added at 74 FR 23965, is proposed to be further amended as follows:

## **PART 300—INTERNATIONAL FISHERIES REGULATIONS**

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

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

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

2. In § 300.211, definitions of “Effort Limit Area for Purse Seine” or “ELAPS”, “Fish aggregating device” or “FAD”, “Fishing day”, “Fishing trip”, and “Purse seine” are added, in alphabetical order, to read as follows:

#### **§ 300.211 Definitions.**

\* \* \* \* \*

*Effort Limit Area for Purse Seine*, or *ELAPS*, means, within the area between 20° N. latitude and 20° S. latitude, areas within the Convention Area that either are high seas or are within the jurisdiction of the United States, including the EEZ and territorial sea.

*Fish aggregating device*, or *FAD*, means 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 objects used for that purpose that are situated on board a vessel or otherwise out of the water.

\* \* \* \* \*

*Fishing day* means, for the purpose of § 300.223, any day in which a fishing vessel of the United States equipped with purse seine gear searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

*Fishing trip* means a period that a fishing vessel spends at sea between port visits and during which any fishing occurs.

\* \* \* \* \*

*Purse seine* means a floated and weighted encircling net that is closed by means of a drawstring threaded through rings attached to the bottom of the net.

\* \* \* \* \*

3. A new § 300.223 is added to read as follows:

#### **§ 300.223 Purse seine fishing restrictions.**

(a) *Fishing effort limits.* This section establishes limits on the number of fishing days that fishing vessels of the United States equipped with purse seine gear may collectively spend in the ELAPS.

(1) The limits are as follows:

(i) For each of the years 2009, 2010, and 2011, there is a limit of 3,882 fishing days.



(ii) For each of the two-year periods 2009–2010 and 2010–2011, there is a limit of 6,470 fishing days.

(iii) For the three-year period 2009–2011, there is a limit of 7,764 fishing days.

(2) NMFS will determine the number of fishing days spent in the ELAPS in each of the applicable time periods using data submitted in logbooks and other available information. After NMFS determines that the limit in any applicable time period is expected to be reached by a specific future date, and at least seven calendar days in advance of the closure date, NMFS will publish a notice in the **Federal Register** announcing that the purse seine fishery in the ELAPS will be closed starting on that specific future date and will remain closed until the end of the applicable time period.

(3) Once a fishery closure is announced pursuant to paragraph (a)(2) of this section, fishing vessels of the United States equipped with purse seine gear may not be used to fish in the ELAPS during the period specified in the **Federal Register** notice.

(b) *Use of fish aggregating devices.* From August 1 through September 30, 2009, and from July 1 through September 30 in each of 2010 and 2011, owners, operators, and crew of fishing vessels of the United States shall not do any of the following in the convention area:

(1) Set a purse seine around a FAD or within one nautical mile of a FAD.

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

(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 owner of the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety.

(c) *Closed areas.*

(1) Effective January 1, 2010, through December 31, 2011, a fishing vessel of the United States may not be used to fish with purse seine gear on the high seas within either Area A or Area B, the respective boundaries of which are the four lines connecting, in the most direct

fashion, the coordinates specified as follows:

(i) Area A: 7° N. latitude and 134° E. longitude; 7° N. latitude and 153° E. longitude; 0° latitude and 153° E. longitude; and 0° latitude and 134° E. longitude.

(ii) Area B: 4° N. latitude and 156° E. longitude; 4° N. latitude and 176° E. longitude; 12° S. latitude and 176° E. longitude; and 12° S. latitude and 156° E. longitude.

(2) NMFS may, through publication of a notice in the **Federal Register**, nullify any or all of the area closures specified in paragraph (c)(1) of this section.

(d) *Catch retention.*

(1) Based on its determination as to whether an adequate number of WCPFC observers are available for the purse seine vessels of all Members of the Commission as necessary to ensure compliance by such vessels with the catch retention requirements established by the Commission, NMFS will, through publication of a notice in the **Federal Register**, announce the effective date of the provisions of paragraph (d) of this section. The effective date will be no earlier than January 1, 2010.

(2) If, after announcing the effective date of these requirements under paragraph (1) of this section, NMFS determines that there is no longer an adequate number of WCPFC observers available for the purse seine vessels of all Members of the Commission as necessary to ensure compliance by such vessels with the catch retention requirements established by the Commission, NMFS may, through publication of a notice in the **Federal Register**, nullify any or all of the requirements specified in paragraph (d) of this section.

(3) Effective from the date announced pursuant to paragraph (d)(1) of this section through December 31, 2011, a fishing vessel of the United States equipped with purse seine gear may not discard at sea within the Convention Area any bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*), except in the following circumstances and with the following conditions:

(i) Fish that are unfit for human consumption, including but not limited to fish that are spoiled, pulverized, severed, or partially consumed at the time they are brought on board, may be discarded.

(ii) If at the end of a fishing trip there is insufficient well space to accommodate all the fish captured in a given purse seine set, fish captured in that set may be discarded, provided that no additional purse seine sets are made during the fishing trip.

(iii) If a serious malfunction of equipment occurs that necessitates that fish be discarded.

(e) *Observer coverage.*

(1) From August 1 through September 30, 2009, a fishing vessel of the United States that is equipped with purse seine gear may not be used to fish in the Convention Area without a WCPFC observer or an observer deployed by NMFS on board. This requirement does not apply to fishing trips that meet any of the following conditions:

(i) The portion of the fishing trip within the Convention Area takes place entirely within areas under U.S. jurisdiction or entirely within areas of jurisdiction of a single nation other than the United States.

(ii) No fishing takes place during the fishing trip in the Convention Area in the area between 20° N. latitude and 20° S. latitude.

(iii) The Regional Administrator has determined that an observer is not available for the fishing trip and a written copy of the Regional Administrator's determination, which must include the approximate start date of the fishing trip and the port of departure, is carried on board the fishing vessel during the entirety of the fishing trip.

(2) Effective January 1, 2010, through December 31, 2011, a fishing vessel of the United States may not be used to fish with purse seine gear in the Convention Area without a WCPFC observer on board. This requirement does not apply to fishing trips that meet any of the following conditions:

(i) The portion of the fishing trip within the Convention Area takes place entirely within areas under U.S. jurisdiction or entirely within the areas of jurisdiction of a single nation other than the United States.

(ii) No fishing takes place during the fishing trip in the Convention Area in the area between 20° N. latitude and 20° S. latitude.

(iii) The Regional Administrator has determined that a WCPFC observer is not available for the fishing trip and a written copy of the Regional Administrator's determination, which must include the approximate start date of the fishing trip and the port of departure, is carried on board the fishing vessel during the entirety of the fishing trip.

(3) Owners, operators, and crew of fishing vessels subject to paragraphs (e)(1) or (e)(2) of this section must accommodate WCPFC observers in accordance with the provisions of § 300.215(c).

(4) Meeting any of the conditions in paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii),

(e)(2)(i), (e)(2)(ii), or (e)(2)(iii) of this section does not exempt a fishing vessel from having to carry and accommodate a WCPFC observer pursuant to § 300.215 or other applicable regulations.

(f) *Sea turtle take mitigation measures.*

(1) *Possession and use of required mitigation gear.* Any owner or operator of a fishing vessel of the United States equipped with purse seine gear that is used to fish in the Convention Area must carry aboard the vessel the following gear:

(i) *Dip net.* A dip net is intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of removing sea turtles from fishing gear, bringing sea turtles aboard the vessel when appropriate, and releasing sea turtles from the vessel. The minimum design standards for dip nets that meet the requirements of this section are:

(A) *An extended reach handle.* The dip net must have an extended reach handle with a minimum length of 150 percent of the freeboard height. The extended reach handle must be made of wood or other rigid material able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending or distortion.

(B) *Size of dip net.* The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches 3 inches (7.62 cm 7.62 cm) in size.

(ii) *Optional turtle hoist.* A turtle hoist is used for the same purpose as a dip net. It is not a required piece of gear, but a turtle hoist may be carried on board and used instead of the dip net to handle sea turtles as required in paragraph (f)(2) of this section. The minimum design standards for turtle hoists that are used instead of dip nets to meet the requirements of this section are:

(A) *Frame and net.* The turtle hoist must consist of one or more rigid frames to which a bag of mesh netting is securely attached. The frame or smallest of the frames must have a minimum opening (e.g., inside diameter, if circular in shape) of 31 inches (78.74 cm) and be capable of supporting a minimum of 100 lb (34.1 kg). The frame or frames may be hinged or otherwise designed so they can be folded for ease of storage, provided that they have no sharp edges and can be quickly reassembled. The bag mesh openings may be no more than 3 inches x 3 inches (7.62 cm x 7.62 cm) in size.

(B) *Lines.* Lines used to lower and raise the frame and net must be securely attached to the frame in multiple places

such that the frame remains stable when lowered and raised.

(2) *Handling requirements.* Any owner or operator of a fishing vessel of the United States equipped with purse seine gear that is used to fish in the Convention Area must, if a sea turtle is observed to be enclosed or entangled in a purse seine, a FAD, or other fishing gear, comply with these handling requirements, including using the required mitigation gear specified in paragraph (f)(1) of this section as prescribed in these handling requirements. Any captured or entangled sea turtle must be handled in a manner to minimize injury and promote survival.

(i) *Sea turtles enclosed in purse seines.* If the sea turtle is observed enclosed in a purse seine but not entangled, it must be released immediately from the purse seine with the dip net or turtle hoist.

(ii) *Sea turtles entangled in purse seines.* If the sea turtle is observed entangled in a purse seine, the net roll must be stopped as soon as the sea turtle comes out of the water, and must not start again until the turtle has been disentangled and released. The sea turtle must be handled and released in accordance with paragraphs (f)(2)(iv), (f)(2)(v), (f)(2)(vi), and (f)(2)(vii) of this section.

(iii) *Sea turtles entangled in FADs.* If the sea turtle is observed entangled in a FAD, it must be disentangled or the FAD must be cut immediately so as to remove the sea turtle. The sea turtle must be handled and released in accordance with paragraphs (f)(2)(iv), (f)(2)(v), (f)(2)(vi), and (f)(2)(vii) of this section.

(iv) *Disentangled sea turtles that cannot be brought aboard.* After disentanglement, if the sea turtle is not already on board the vessel and it is too large to be brought aboard or cannot be brought aboard without sustaining further injury, it shall be left where it is in the water, or gently moved, using the dip net or turtle hoist if necessary, to an area away from the fishing gear and away from the propeller.

(v) *Disentangled sea turtles that can be brought aboard.* After disentanglement, if the sea turtle is not too large to be brought aboard and can be brought aboard without sustaining further injury, the following actions shall be taken:

(A) Using the dip net or a turtle hoist, the sea turtle must be brought aboard immediately; and

(B) The sea turtle must be handled in accordance with the procedures in paragraphs (f)(2)(vi) and (f)(2)(vii) of this section.

(vi) *Sea turtle resuscitation.* If a sea turtle brought aboard appears dead or comatose, the following actions must be taken:

(A) The sea turtle must be placed on its belly (on the bottom shell or plastron) so that it is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation varies with the size of the sea turtle; greater elevations are needed for larger sea turtles;

(B) A reflex test must be administered at least once every 3 hours. The test is to be performed by gently touching the eye and pinching the tail of a sea turtle to determine if the sea turtle is responsive;

(C) The sea turtle must be kept shaded and damp or moist (but under no circumstances place the sea turtle into a container holding water). A water-soaked towel placed over the eyes (not covering the nostrils), carapace and flippers is the most effective method of keeping a sea turtle moist; and

(D) If the sea turtle revives and becomes active, it must be returned to the sea in the manner described in paragraph (f)(2)(vii) of this section. Sea turtles that fail to revive within the 24-hour period must also be returned to the sea in the manner described in paragraph (f)(2)(vii) of this section, unless NMFS requests that the turtle or part thereof be kept on board and delivered to NMFS for research purposes.

(vii) *Sea turtle release.* After handling a sea turtle in accordance with the requirements of paragraphs (f)(2)(v) and (f)(2)(vi) of this section, the sea turtle must be returned to the ocean after identification unless NMFS requests the retention of a dead sea turtle for research. In releasing a sea turtle the vessel owner or operator must:

(A) Place the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped;

(B) Using the dip net or a turtle hoist to release the sea turtle with little impact, gently release the sea turtle away from any deployed gear; and

(C) Observe that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

(viii) *Other sea turtle requirements.* No sea turtle, including a dead turtle, may be consumed or sold. A sea turtle may be landed, offloaded, transshipped or kept below deck only if NMFS requests the retention of a dead sea turtle or a part thereof for research.

4. In § 300.222, paragraphs (v) through (aa) are added to read as follows:

**§ 300.222 Prohibitions.**

\* \* \* \* \*

(v) Use a fishing vessel equipped with purse seine gear to fish in the ELAPS while the fishery is closed under § 300.223(a).

(w) Set a purse seine around, near or in association with a FAD or deploy or service a FAD in contravention of § 300.223(b).

(x) Use a fishing vessel equipped with purse seine gear to fish in an area closed under § 300.223(c).

(y) Discard fish at sea in the ELAPS in contravention of § 300.223(d).

(z) Fail to carry an observer as required in § 300.223(e).

(aa) Fail to comply with the sea turtle mitigation gear and handling requirements of § 300.223(f).

[FR Doc. E9-12646 Filed 5-29-09; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

RIN 0648-AW19

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery off the Southern Atlantic States; Amendment 7**

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

**ACTION:** Notice of Availability of Amendment 7 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region; request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) has submitted Amendment 7 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. Amendment 7 proposes actions to rename the commercial vessel permit and the limited access endorsement; remove the requirement for a minimum level of landings for the renewal of a limited access endorsement; allow the reissue of a limited access endorsement that had been terminated because of failure to meet that minimum level; allow the reissue of an endorsement that had been terminated because of failure to renew it in a timely manner; and require the submission of economic data by participants in the fishery. The measures contained in the subject

amendment are intended to maintain a viable rock shrimp fishery in the South Atlantic region.

**DATES:** Comments must be received no later than 5 p.m., eastern time, on July 31, 2009.

**ADDRESSES:** You may submit comments on the proposed rule, identified by “0648-AW19”, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- Fax: 727-824-5308, Attn: Kate Michie.
- Mail: Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter “NOAA-NMFS-2008-0319” in the keyword search, then check the box labeled “Select to find documents accepting comments or submissions”, then select “Send a Comment or Submission.” NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 7 may be obtained from the South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone: 843-571-4366 or 866-SAFMC-10 (toll free); fax: 843-769-4520; e-mail: [safmc@safmc.net](mailto:safmc@safmc.net). Amendment 7 includes an Environmental Assessment, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, telephone: 727-824-5305; fax: 727-824-5308; e-mail: [Kate.Michie@noaa.gov](mailto:Kate.Michie@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The South Atlantic shrimp fishery is managed under the FMP. The FMP was prepared by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

**Background**

Amendment 5 to the FMP established a limited access program for the rock shrimp fishery in federal waters south of the South Carolina/Georgia state line. In 2003, endorsements were issued to vessels with at least 15,000 pounds of rock shrimp landings in any one year during 1997-2000. A vessel must land at least 15,000 pounds of rock shrimp in at least one year during any four consecutive years or the endorsement cannot be renewed. The Rock Shrimp Advisory Panel (AP) suggested these landings requirements because they were concerned about the high number of latent permit holders and vessels that fished infrequently. The limited access program criteria were set so the core group of participants would remain in the fishery while overall effort was reduced. Of the 155 vessels issued limited access endorsements, 105 are currently active, 20 are renewable, and 30 are non-renewable. Therefore, a maximum of 125 endorsements are or may become active in the rock shrimp fishery under the current permit requirements.

The need for action through Amendment 7 to the FMP is based on the desire to maintain a viable rock shrimp fishery in the South Atlantic region. The AP suggested the fishery could support no more than 150 vessels. However, fewer vessels may not fully utilize the resource. The Council has determined that actions implemented through Amendment 5 have resulted in the desired reduction in capacity and may no longer be necessary in light of changes in the rock shrimp fishery over the past six years.

The Council is primarily concerned about the 15,000-pound landing requirement because 43 vessels have not met the requirement after the first four years of the program. The AP suggested the Council consider whether this provision should be retained, revoked, revised, or possibly extended (i.e. allow vessels a longer time period to meet the requirement). In addition, the AP suggested reinstatement of endorsements lost as a result of not meeting the landings requirement.

Another issue involves the requirement for vessel owners to renew their vessel's endorsement within one year after the endorsement's expiration date to retain their eligibility. The Council is concerned about confusion over the rock shrimp limited access endorsement as implemented in the final rule for Amendment 5 versus the