

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130104012-3012-01]

RIN 0648-BC88

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Bigeye Tuna Catch Limit in Longline Fisheries for 2013 and 2014

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 (WCPFC Implementation Act) to establish a catch limit of 3,763 metric tons (mt) of bigeye tuna (*Thunnus obesus*) for vessels in the U.S. pelagic longline fisheries operating in the western and central Pacific Ocean (WCPO) for each of the calendar years 2013 and 2014. The limit would not apply to vessels in the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands (CNMI). Once the limit of 3,763 mt is reached in 2013 or 2014, retaining, transshipping, or landing bigeye tuna caught in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), which comprises the majority of the WCPO, would be prohibited for the remainder of the calendar year, with certain exceptions. This action is necessary for the United States to satisfy its obligations under the Convention, to which it is a Contracting Party.

DATES: Comments must be submitted in writing by July 18, 2013.

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA-NMFS-2013-0090, and the regulatory impact review (RIR) prepared for this proposed rule, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2013-0090, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

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

Copies of the RIR and the Supplemental Information Report (SIR) prepared for National Environmental Policy Act (NEPA) purposes are available at www.regulations.gov or may be obtained from Michael D. Tosatto, NMFS PIRO (see address above). The SIR is described in more detail below in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808-944-2273.

SUPPLEMENTARY INFORMATION:**Background on the Convention**

A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC Web site at: www.wcpfc.int/doc/convention-area-map. The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO. To accomplish this objective, the Convention establishes the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The WCPFC

includes Members, Cooperating Non-members, and Participating Territories (collectively, CCMs). The United States is a Member. American Samoa, Guam, and the CNMI are Participating Territories.

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. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations to NMFS.

WCPFC Decisions Regarding Bigeye Tuna Catch Limits in Longline Fisheries

At its Ninth Regular Session, in Manila, Philippines, in December 2012, the WCPFC adopted "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean" (CMM 2012-01). The CMM's stated general objective is to ensure that the stocks of bigeye tuna, yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) in the WCPO are, at a minimum, maintained at levels capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors. The CMM includes specific objectives for each of the three stocks: For each, the fishing mortality rate is to be reduced to or maintained at levels no greater than the fishing mortality rate associated with maximum sustainable yield. The requirements of the CMM, identified as "interim" measures, are for calendar year 2013. The CMM also calls for the WCPFC to establish, at its regular annual session in December 2013, a multi-year management program for 2014-2017 for the three stocks. Given the stock status of bigeye tuna in the WCPO and the general positions of CCMs regarding their longline fisheries,

it is highly likely that the multi-year management program will result in a CMM with the same catch limits for longline fisheries as those included in CMM 2012–01. NMFS proposes to implement the longline provisions of CMM 2012–01 for 2014 as well as 2013, and to implement changes as necessary following the regular session of the WCPFC in December 2013. In this manner, NMFS will avoid any gaps in regulatory oversight of the fisheries that otherwise might result. Implementing this proposed rule for 2013 and 2014 also would serve to provide advance notice to the public that the catch limit would continue, pending implementation of any new measure adopted by the WCPFC, allowing fishers to adjust their fishing practices accordingly. Once the WCPFC adopts a new CMM, NMFS will take the steps necessary to implement that CMM.

CMM 2012–01 is the successor to CMM 2011–01, adopted in March 2012 (most provisions of which were applicable in 2012), and to CMM 2008–01, adopted in December 2008 (most provisions of which were applicable in 2009–2011). These and other CMMs adopted by the WCPFC are available at www.wcpfc.int/conservation-and-management-measures.

Among other provisions, CMM 2012–01 requires that CCMs limit catches of bigeye tuna by their longline vessels to specified levels in 2013. The catch limit for the United States longline fisheries is 3,763 mt. This is the same as the catch limit for the United States established in CMMs 2008–01 and 2011–01 that NMFS implemented for 2009–2012 (final rule published 74 FR 63999 (2009 rule) and interim final rule published 77 FR 51709 (2012 rule)). As in the 2009 rule and the 2012 rule, this proposed rule would establish a limit on retained catches (as a proxy for catches) of bigeye tuna. Under CMM 2012–01 and its Attachment F, the longline fisheries of American Samoa, Guam, and the CNMI are not subject to longline bigeye tuna catch limits.

Proposed Action

This proposed rule would implement the longline bigeye tuna catch limit of CMM 2012–01 for the United States. The proposed limit and associated restrictions would apply to U.S. longline fisheries in the WCPO other than those of American Samoa, Guam, and the CNMI.

Establishment of the Limit

For the purpose of this proposed rule, the longline fisheries of the three U.S. Participating Territories would be distinguished from the other longline

fisheries of the United States (all of which are U.S.-flagged vessels) based on a combination of three factors: (1) Where the bigeye tuna are landed; (2) the types of Federal longline fishing permits registered to the fishing vessel; and (3) whether the fishing vessel is included in an arrangement under authorization of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Pub. L. 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013). Hereafter, this law is referred to as the “Section 113 authorization”; the original law, enacted for 2011 and 2012, is referred to as “prior Section 113(a)”; and, arrangements authorized under either of these laws are referred to as “Section 113(a) arrangements.”

The Section 113 authorization remains in effect until the earlier of December 31, 2013, or such time as the Western Pacific Fishery Management Council (WPFMC) recommends, and the Secretary approves, an amendment to the Fishery Ecosystem Plan for the Pacific Pelagic Fisheries of the Western Pacific Region (Pelagics FEP) that would authorize U.S. Participating Territories to use, assign, allocate, and manage catch limits of highly migratory fish stocks, or fishing effort limits, established by the WCPFC, and the amendment is implemented via regulations. The WPFMC at its 154th meeting took final action to amend the Pelagics FEP accordingly; however, the amendment has not yet been approved or implemented by NMFS. It is possible the amendment will apply in 2013 or 2014, in which case the provisions of this proposed rule that take into consideration the Section 113 authorization would cease to apply, as the amendment would effectively replace it. The Section 113 authorization may also cease to apply on its own in 2014, if the effective date is not further extended beyond December 31, 2013; therefore, the provisions of this proposed rule that take into consideration the Section 113 authorization would similarly cease to apply. Thus, this proposed rule provides notice to the public that the provisions in the rule for Section 113(a) arrangements may be applicable in 2014, if the Section 113 authorization is further continued, but the regulatory text would only implement the provisions for Section 113(a) arrangements for 2013. NMFS would take appropriate action to amend the regulatory text if Section 113(a) arrangements are applicable in 2014.

With respect to the first factor, bigeye tuna landed by U.S. vessels in any of the three U.S. Participating Territories, with certain provisos, would be attributed to the longline fishery of that Participating Territory. The provisos are that: (1) The bigeye tuna must not be captured in the portion of the U.S. exclusive economic zone (EEZ) surrounding the Hawaiian Archipelago; and (2) the bigeye tuna must be landed by a U.S. fishing vessel operated in compliance with one of the permits required under the regulations implementing the Pelagics FEP developed by the WPFMC or the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (West Coast HMS FMP) developed by the Pacific Fishery Management Council (i.e., a permit issued under 50 CFR 665.801 or 660.707).

With respect to the second factor, bigeye tuna that are caught by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit would, subject to the provisos mentioned above, be attributed to the longline fishery of American Samoa, regardless of where that catch is landed. This distinction is made because American Samoa Longline Limited Access Permits are issued only to people that have demonstrated participation in the American Samoa pelagic fisheries, such that the catch may properly be attributed to that territory. The 2009 rule and the 2012 rule included these two above factors as well as the related provisos.

The 2012 rule also included a third factor for the attribution of catch to the U.S. Participating Territories, to take into consideration the provisions of prior Section 113(a). This proposed rule takes into consideration these same provisions, which are included in the Section 113 authorization. These provisions authorize the U.S. Participating Territories of the WCPFC to use, assign, allocate, and manage catch limits or fishing effort limits agreed to by the WCPFC through arrangements with U.S. vessels with permits issued under the Pelagics FEP. They also further direct the Secretary of Commerce, for the purposes of annual reporting to the WCPFC, to attribute catches made by vessels operating under Section 113(a) arrangements to the U.S. Participating Territories. The provisions also establish specific eligibility criteria for these arrangements. The 2012 rule established additional requirements and conditions for catches to be attributed to the U.S. Participating Territories. This proposed rule includes these same eligibility criteria, requirements, and conditions, which are described in more detail below.

The longline fisheries of the United States and its territories operating in the WCPO are managed as discrete fisheries, with separate compilations of catch and effort statistics and separate management measures for each fishery. In order to allow for the orderly administration of these fisheries and a consistent manner of attributing catches to the fisheries of the U.S. Participating Territories under eligible Section 113(a) arrangements, NMFS would wait to attribute catches under eligible Section 113(a) arrangements until the date the catch limit would be reached can be forecasted with a fairly high degree of probability. Thereafter, NMFS would attribute catches to the fisheries of the U.S. Participating Territories under eligible Section 113(a) arrangements starting seven days before the date the U.S. catch limit is forecasted to be reached. This procedure would allow NMFS to properly administer and enforce the specific management requirements for each fishery throughout the year, consistent with the approved Pelagics FEP.

As in 2012, NMFS would prepare forecasts during 2013 and 2014 of the date that the bigeye tuna catch limit would be reached and periodically make these forecasts available to the public, such as by posting on a Web site. All the forecasts prepared up until the time that catch attribution to the U.S. Participating Territories under Section 113(a) arrangements actually begins would assume that there would be no such catch attribution to the U.S. Participating Territories. Those forecasts would be subject to change as new information becomes available. Because of these potential changes, it is necessary to identify a particular forecast for the purpose of determining when catch attribution to the U.S. Participating Territories under eligible Section 113(a) arrangements would begin. For this purpose, NMFS would use the first forecast that indicates the catch limit would be reached within 28 days of the date of preparation of that forecast. The projected catch limit date in this forecast would be called, for the purpose of this proposed rule, the pre-Section 113(a) attribution forecast date. As soon as NMFS determines the pre-Section 113(a) attribution forecast date, NMFS would evaluate all Section 113(a) arrangements that it has received to date, based on the eligibility criteria specified below, and calculate a new forecast date for the catch limit, this time not counting as part of the tally any U.S. catches to be attributed to the U.S. Participating Territories under eligible Section 113(a) arrangements. In order to

allow NMFS a reasonable amount of time to complete this process, NMFS would begin attributing catches to the U.S. Participating Territories under eligible Section 113(a) arrangements seven days before the pre-Section 113(a) attribution forecast date and the new forecast date for the catch limit would be calculated based on this attribution start date. At that time, NMFS would also make publicly available a new forecast date on a Web site—the post-Section 113(a) attribution forecast date—and would update that forecast date as appropriate throughout 2013 and 2014 (if Section 113(a) arrangements are applicable in 2014).

There would be no official due date for the receipt by NMFS of potentially eligible Section 113(a) arrangements. However, NMFS would need 14 days to process arrangements that it receives, so for an arrangement received after the date that NMFS determines the pre-Section 113(a) attribution forecast date, attribution to the appropriate U.S. Participating Territory would start 14 days after NMFS has received the arrangement or seven days before the pre-Section 113(a) attribution forecast date, whichever date is later.

NMFS considered starting catch attribution to the U.S. Participating Territories under eligible Section 113(a) arrangements only after the 3,763 mt catch limit is reached, in order to be consistent with past administration of the longline fisheries in the WCPO. However, given the time needed to process Section 113(a) arrangements and the time needed to put into effect the prohibitions once the 3,763 mt catch limit is reached, waiting until the catch limit is reached to begin attribution under arrangements with the U.S. Participating Territories would likely cause public confusion and result in unnecessary costs in the fishery if there is an eligible Section 113(a) arrangement. For example, should attribution begin only after the catch limit is reached and the prohibitions go into effect, a vessel owner providing NMFS with a copy of an eligible arrangement a few days before the catch limit is reached would be subject to the prohibitions for a number of days while the arrangement is reviewed, even though the prohibitions would be later found not to apply to the vessel. Beginning attribution to the U.S. Participating Territories a short period before the pre-Section 113(a) attribution forecast date would help minimize confusion and costs associated with such a situation. It would also have the advantage of avoiding, in certain circumstances, the administrative and

other costs associated with putting the prohibitions into effect.

The proposed rule would also include certain requirements that must be met in order for NMFS to attribute bigeye tuna caught by a particular vessel included in a Section 113(a) arrangement to the longline fishery of a U.S. Participating Territory. First, with the exception of existing arrangements received by NMFS prior to the effective date of the proposed rule, NMFS would need to receive from the vessel owner or designated representative a copy of the arrangement at least 14 days prior to the date the bigeye tuna were caught. In addition, the arrangement would need to satisfy specific criteria, discussed in detail in the section below.

Any bigeye tuna attributed to the longline fisheries of American Samoa, Guam, or the CNMI as specified in the proposed rule would not be counted against the U.S. limit. All other bigeye tuna captured by longline gear in the Convention Area by U.S. longline vessels and retained would be counted against the U.S. limit of 3,763 mt.

Eligible Arrangements

Under the proposed rule, an arrangement would not be eligible for the attribution of bigeye tuna to the U.S. Participating Territories under the terms of the Section 113 authorization, unless each of the following five criteria were met: (1) The arrangement would need to include vessels registered for use with valid permits issued under the Pelagics FEP; (2) the arrangement could not impose requirements regarding where the vessels fish or land their catch; (3) the arrangement would need to be signed by all the owners of the vessels included in the arrangement, or by their designated representative(s); (4) the arrangement would need to be signed by an authorized official of the U.S. Participating Territory(ies) or his or her designated representative(s); and (5) the arrangement would need to be funded by deposits to the Western Pacific Sustainable Fisheries Fund in support of fisheries development projects identified in a territory's Marine Conservation Plan adopted pursuant to section 204 of the MSA. If NMFS determined that an arrangement did not meet the criteria for eligibility, NMFS would notify the parties to the arrangement or their designated representative(s) of its determination within 14 days of receiving a copy of the arrangement.

Announcement of the Limit Being Reached

Under the proposed rule, should NMFS determine that the limit is

expected to be reached before the end of 2013 or 2014, NMFS would publish a notice in the **Federal Register** to announce specific fishing restrictions that would be effective from the date the limit is expected to be reached until the end of the 2013 or 2014 calendar year. NMFS would publish the notice of the restrictions at least seven calendar days before the effective date to provide vessel operators with advance notice. Periodic forecasts of the date the limit is expected to be reached would be made available to the public, such as by posting on a Web site, to help vessel operators plan for the possibility of the limit being reached.

Restrictions After the Limit Is Reached

(1) *Retain on board, transship, or land bigeye tuna:* Starting on the effective date of the restrictions and extending through December 31 of that calendar year, it would be prohibited to use a U.S. fishing vessel to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear, except as follows:

First, any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions could be retained on board, transshipped, and/or landed, provided that they were landed within 14 days after the restrictions become effective. A vessel that had declared to NMFS pursuant to 50 CFR 665.803(a) that the current trip type is shallow-setting would not be subject to this 14-day landing restriction, so these vessels would be able to land fish more than 14 days after the restrictions become effective.

Second, bigeye tuna captured by longline gear could be retained on board, transshipped, and/or landed if they were caught by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit, or if they were landed in American Samoa, Guam, or the CNMI, with the following provisos: The bigeye tuna must not have been caught in the portion of the U.S. EEZ surrounding the Hawaiian Archipelago and must have been landed by a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

Third, bigeye tuna captured by longline gear could be retained on board, transshipped, and/or landed if they were caught by a vessel that is included in an eligible Section 113(a) arrangement, as specified above, and the bigeye tuna were subject to attribution to the longline fishery of American Samoa, Guam, or the CNMI in accordance with the terms of the arrangement, and to the extent

consistent with the requirements and procedures set forth in the proposed rule, with the following proviso: NMFS would need to have received from the vessel owner or designated representative a copy of the arrangement at least 14 days prior to the activity (i.e., the retention on board, transshipment, or landing). The advance notification provision would not apply to existing arrangements received by NMFS prior to the effective date of the proposed rule.

(2) *Transshipment of bigeye tuna to certain vessels:* Starting on the effective date of the restrictions and extending through December 31 of that calendar year, it would be prohibited to transship bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

(3) *Fishing inside and outside the Convention Area:* To help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, the proposed rule would establish two additional, related prohibitions that would be in effect starting on the effective date of the restrictions and extending through December 31 of that calendar year. First, it would be prohibited to fish with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel would still be required to land any bigeye tuna taken in the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a vessel is used to fish using longline gear outside the Convention Area and enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel would be required to be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area. These two prohibitions would not apply to the following vessels: (1) Vessels on declared shallow-setting trips pursuant to 50 CFR 665.803(a); and (2) vessels operating for the purposes of this rule as part of the longline fisheries of American Samoa, Guam, or the CNMI (including vessels registered for use under valid American Samoa Longline Limited Access Permits and vessels landing their bigeye tuna catch in one of the three U.S. Participating Territories, so long as these vessels conduct fishing activities in accordance with the provisos described above; and vessels included in an eligible Section 113(a) arrangement, as specified above,

provided that their catches of bigeye tuna are subject to attribution to the longline fishery of American Samoa, Guam, or the CNMI at the time of the activity).

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this proposed rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

National Environmental Policy Act

For implementation of the 2009 rule, NMFS prepared an Environmental Assessment (EA) and a Supplemental EA (hereafter, 2009 EA and 2009 SEA, respectively). For implementation of the 2012 rule, NMFS prepared a Supplemental EA (hereafter, 2012 EA). NMFS has prepared a Supplemental Information Report (SIR) to examine whether additional NEPA analysis is needed to assess the impacts of the proposed rule on the human environment. The SIR includes the following sections: (1) The criteria for supplementing NEPA analysis; (2) summary of existing NEPA documents; (3) evaluation of the proposed action; (4) evaluation of new information available since preparation of the existing NEPA analysis; (5) analysis of the need for additional NEPA analysis; and (6) conclusions. In the SIR, NMFS concludes that no supplemental NEPA analysis is required to implement by regulation the 3,763 mt bigeye tuna catch limit for U.S. longline fisheries for 2013 and 2014 for the following reasons: (1) The proposed action is substantially the same as the 2009 rule and the 2012 rule; (2) the potential impacts from the proposed action on the human environment were addressed in the 2009 EA, 2009 SEA, and 2012 SEA; (3) the resources potentially affected by the proposed action were adequately described and evaluated in the 2009 EA, 2009 SEA, and 2012 SEA; and (4) there is no new significant information or circumstances affecting the action area that were not taken into consideration in the 2009 EA, 2009 SEA, and 2012 SEA.

Executive Order 12866

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

Regulatory Flexibility Act

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this

proposed rule would have on affected small entities, if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. The analysis follows:

Estimated Number of Small Entities Affected

The proposed rule would apply to owners and operators of U.S. vessels fishing with longline gear in the Convention Area, except those that are part of the longline fisheries of American Samoa, Guam, and the CNMI. The total number of affected entities is approximated by the number of Hawaii Longline Limited Access Permits (issued under 50 CFR 665.13) that are assigned to vessels (permitted vessels). Under the limited access program, no more than 164 permits may be issued. During 2006–2012 the number of permitted vessels ranged from 130 to 145 (these figures and some other estimates in the remainder of this IRFA differ slightly from previously published estimates because of subsequent updates to the data and/or methods that were used for the estimates). The current number of permitted vessels (as of May 2013) is 129. Traditionally, most of the Hawaii fleet's fishing effort has been in the Convention Area, with the remainder of the effort to the east of the Convention Area, as described below. Owners and operators of U.S. longline vessels based on the U.S. west coast also could be affected by this proposed rule. However, based on the complete lack of fishing by that fleet in the Convention Area since 2005, it is expected that very few, if any, U.S. west coast vessels would be affected.

Most of the Hawaii longline fleet targets bigeye tuna using deep sets, and during certain parts of the year, portions of the fleet target swordfish using shallow sets. In the years 2005 through 2012, the estimated numbers of Hawaii longline vessels that actually fished ranged from 124 to 129. Of the vessels that fished, the number of vessels that engaged in deep-setting in the years 2005 through 2012 ranged from 122 to 129, and the number of vessels that engaged in shallow-setting ranged from 18 to 35. The number of vessels that engaged in both deep-setting and shallow-setting ranged from 17 to 35. The number of vessels that engaged exclusively in shallow-setting ranged from zero to two. As an indication of the size of businesses in the fishery, average annual ex-vessel revenue for the fleet during 2005–2010 was about \$71

million (in 2012 dollars). Virtually all of those revenues are believed to come from shallow-set and deep-set longlining. Based on an average of 127 active vessels during that period, the mean annual per-vessel revenue was about \$0.6 million (in 2012 dollars). NMFS has determined that most or all vessels in the affected fisheries are likely to be small entities based on the average annual per-vessel revenue and the Small Business Administration's definition of a small fish harvester (i.e., gross annual receipts of less than \$4.0 million).

Recordkeeping, Reporting, and Other Compliance Requirements

The proposed rule would not establish any new reporting or recordkeeping requirements. The new compliance requirement would be for affected vessel owners and operators to cease retaining, landing, and transshipping bigeye tuna caught with longline gear in the Convention Area if and when the catch limit is reached in 2013 or 2014, for the remainder of the calendar year, with the exceptions and provisos described in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. (Although the restrictions that would come into effect in the event the catch limit is reached would not prohibit longline fishing, *per se*, they are sometimes referred to in this analysis as constituting a “fishery closure.”) Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with this requirement are described below to the extent possible.

Complying with the proposed rule could cause foregone fishing opportunities and result in associated economic losses in the event that the bigeye tuna catch limit is reached in 2013 or 2014 and the restrictions on retaining, landing, and transshipping bigeye tuna are imposed for portions of either or both of those years. These costs cannot be projected with any quantitative certainty. For the purpose of projecting baseline conditions under no action, this analysis relies primarily on fishery performance from 2005 through 2008. The years prior to 2005 are excluded because the regulatory environment underwent major changes (the swordfish-directed shallow-set longline fishery was closed in 2001 and reopened in 2004 with limits on fishing effort and turtle interactions). The years 2009–2012 are excluded because bigeye tuna catch limits similar to the limits proposed here were in place. The proposed limit, by prescription, is 10

percent less than catches in 2004 (here and in the remainder of this IRFA, “catches” means fish that are caught and retained on board). The proposed annual limit of 3,763 mt is less than the amount caught in any of the years 2005–2008, and it is 20 percent less than the annual average amount caught in that period. Thus, if catches in 2013 and 2014 are similar to those in 2005–2008, there would be a fairly high likelihood of the proposed limit being reached in both years.

If the bigeye tuna limit is reached before the end of 2013 or 2014 and the Convention Area bigeye fishery is consequently closed for the remainder of the calendar year, it can be expected that affected vessels would shift to the next most profitable fishing opportunity (which might be not fishing at all). Revenues from that “next best” alternative activity reflect the opportunity costs associated with longline fishing for bigeye tuna in the Convention Area. The economic cost of the proposed rule would not be the nominal direct losses in revenues that would result from not being able to fish for bigeye tuna in the Convention Area, but rather the difference in benefits derived from that activity and those derived from the next best activity. The economic cost of the proposed rule on affected entities is examined here by first estimating the direct losses in revenues that would result from not being able to fish for bigeye tuna in the Convention Area as a result of the catch limit being reached. Those losses represent the upper bound of the economic cost of the proposed rule on affected entities. Potential next-best alternative activities that affected entities could undertake are then identified in order to provide a (mostly qualitative) description of the degree to which actual costs would be lower than that upper bound.

Upper bounds on potential economic costs can be estimated by examining the projected value of longline landings from the Convention Area that would not be made as a result of reaching the limit. For this purpose, it is assumed that, absent this proposed rule, fishing patterns in 2013 and 2014 would be about the same as those in 2005–2008. In the IRFA for the 2009 rule, two no-action scenarios were considered—one in which future catches would be equal to the average during 2005–2008, and a second in which the increasing trend in the fleet's catches in 2005–2008 would continue in future years. The second scenario is not considered in this analysis because if catches in 2011—a year in which a bigeye tuna catch limit was in place but was not reached—are

considered, there was no clear upward trend (in 2009 and 2010, the limit was reached and the restrictions went into effect). Based on the numbers of fish caught from vessel logbook data, and average fish weights derived from landings data, the average annual fleet catch of bigeye tuna in 2005–2008 was 4,718 mt. Thus, if catches in 2013 and 2014 would be 4,718 mt per year without a limit in place, imposition of a catch limit of 3,763 mt would be expected to result in 20 percent less bigeye tuna being caught in 2013–2014 than under no action. In the deep-set fishery, catches of marketable species other than bigeye tuna would likely be affected in a similar way (if vessels do not shift to alternative activities). Assuming for the moment that ex-vessel prices would not be affected by a fishery closure, under the proposed rule, revenues in 2013 and 2014 to entities that participate exclusively in the deep-set fishery would be approximately 20 percent less than under no action. If average annual ex-vessel revenues during 2005–2008 (about \$0.6 million per active vessel, in 2012 dollars) are a good indicator of future revenues under no action, per-vessel annual revenues under the proposed rule would be as much as \$0.1 million less, on average, than under no action.

In the shallow-set fishery, affected entities would bear limited cost in the event of the limit being reached (but most affected entities also participate in the deep-set fishery and might bear costs in that fishery, as described below). The cost would be approximately equal to the revenues lost from not being able to retain or land bigeye tuna captured while shallow-setting in the Convention Area, or the cost of shifting to shallow-setting in the eastern Pacific Ocean (EPO), which is to the east of 150 degrees W. longitude, whichever is less. In the fourth calendar quarters of 2005–2008, almost all shallow-setting effort took place in the EPO, and 97 percent of bigeye tuna catches were made there, so the cost of a bigeye tuna fishery closure would appear to be very limited. During 2005–2008, the shallow-set fishery caught an average of 54 mt of bigeye tuna per year from the Convention Area. If the proposed bigeye tuna catch limit is reached even as early as July 31 in 2013 or 2014, the Convention Area shallow-set fishery would have caught at that point, based on 2005–2008 data, on average, 99 percent of its average annual bigeye tuna catches. Thus, imposition of the landings restriction at that point in 2013 or 2014 would result in the loss of revenues from approximately 0.5 mt (1

percent of 54 mt) of bigeye tuna, which, based on recent ex-vessel prices, would be worth no more than \$5,000. Thus, expecting about 27 vessels to engage in the shallow-set fishery (the annual average in 2005–2012), the average of those potentially lost annual revenues would be no more than \$200 per vessel.

The remainder of this analysis focuses on the potential costs of compliance in the deep-set fishery. Again, the estimates of potentially lost revenues given above are for the purpose of estimating upper bounds on potential economic losses on affected entities and do not account for revenues from alternative activities, some of which are discussed further below.

It should be noted that impacts on affected entities' profits would be less than impacts on revenues, because costs would be lower if a vessel ceases fishing after the catch limit is reached. Variable costs can be expected to be affected roughly in proportion to revenues, as both would stop accruing once a vessel stops fishing. But affected entities' costs also include fixed costs, which are borne regardless of whether a vessel is used to fish—e.g., if it is tied up at the dock during a fishery closure. Thus, profits would likely be adversely impacted proportionately more than revenues.

As stated previously, actual compliance costs for a given entity might be less than the upper bounds described above because ceasing fishing would not necessarily be the most profitable opportunity in the event of the catch limit being reached. Two alternative opportunities that are expected to be attractive to affected entities include: (1) Deep-set longline fishing for bigeye tuna in the Convention Area in a manner such that the vessel is considered part of the longline fishery of American Samoa, Guam, or the CNMI; and (2) deep-set longline fishing for bigeye tuna and other species in the EPO. These two opportunities are discussed in detail below. Three additional opportunities, which were examined in economic analyses prepared for the 2009 rule are: (3) Shallow-set longline fishing for swordfish (for deep-setting vessels that would not otherwise do so), (4) deep-set longline fishing in the Convention Area for species other than bigeye tuna, and (5) working in cooperation with vessels operating as part of the longline fisheries of the Participating Territories—specifically, receiving transshipments at sea from them and delivering the fish to the Hawaii market. Vessel repair and maintenance is another possibility. A study by NMFS of the effects of the WCPO bigeye tuna

longline fishery closure in 2010 (Richmond, L., D. Kotowicz, J. Hospital and S. Allen, 2012, Adaptations in a Fishing Community: Monitoring Socioeconomic Impacts of Hawai'i's 2010 Bigeye Tuna Closure, PIFSC Internal Report IR-12-019, Honolulu, United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Pacific Islands Fisheries Science Center) did not identify any alternative activities that vessels engaged in during the closure other than deep-setting for bigeye tuna in the EPO, vessel maintenance and repairs, and granting lengthy vacations to employees. Thus, alternative opportunities (3), (4) and (5) are probably relatively unattractive relative to the first two, and they are not discussed here in any further detail.

Before examining in detail the two potential alternative opportunities that would appear to be the most attractive to affected entities, it is important to note that under the proposed rule, once the limit is reached and the WCPO bigeye tuna fishery is closed, it would be prohibited to fish with longline gear both inside and outside the Convention Area during the same trip (with the exception of a fishing trip that is in progress when the limit is reached and the restrictions go into effect). For example, after the restrictions go into effect, during a given fishing trip, a vessel could be used for longline fishing for bigeye tuna in the EPO or for longline fishing for species other than bigeye tuna in the Convention Area, but not both. This reduced operational flexibility would bring costs, since it would constrain the potential profits from alternative opportunities collectively. Those costs cannot be quantified.

With respect to alternative opportunity (1), deep-setting for bigeye tuna in a manner such that the vessel is considered part of the longline fishery of one of the three U.S. Participating Territories, there would be three such ways to do so: (a) landing the bigeye tuna in one of the three Participating Territories; (b) having an American Samoa Longline Limited Access Permit; or (c) entering into an arrangement with one or more of the three Participating Territories under the Section 113 authorization, such that the vessel is considered part of the Participating Territory's longline fishery. In the first two circumstances, the vessel would be considered part of the longline fishery of the Participating Territory only if the bigeye tuna were not caught in the portion of the U.S. EEZ around the Hawaiian Islands and they are landed

by a U.S. vessel operated in compliance with a permit issued under the Pelagics FEP or the West Coast HMS FMP.

With respect to alternative opportunity (1)(a), landing the bigeye tuna in one of the Participating Territories, there are three potentially important constraints. First, whether the fish are landed by the vessel that caught the fish or by a vessel to which the fish were transshipped, the costs of a vessel transiting from the traditional fishing grounds in the vicinity of the Hawaiian Archipelago to one of the Participating Territories would be substantial. Second, none of these three locales has large local consumer markets to absorb substantial additional landings of fresh sashimi-grade bigeye tuna. Third, transporting the bigeye tuna from these locales to larger markets, such as in Hawaii, the U.S. west coast, or Japan, would bring substantial additional costs and risks. These cost constraints suggest that this opportunity has limited potential to mitigate the economic impacts of the proposed rule on affected small entities.

Opportunity (1)(b), having an American Samoa Longline Limited Access Permit, would be available only to the subset of the Hawaii longline fleet that has both Hawaii and American Samoa longline permits (“dual permit vessels”). Vessels that do not currently have both permits could obtain them if they meet the eligibility requirements and pay the required costs. For example, the number of dual permit vessels increased from 12 in 2009, when the first WCPO bigeye tuna catch limit was established, to 20 in 2011, where it remained in 2012. The previously cited NMFS study of the 2010 fishery closure (Richmond *et al.* 2012) found that bigeye tuna landings of dual permit vessels increased substantially after the start of the closure on November 22, 2010, indicating that this was an attractive opportunity for dual permit vessels, and suggesting that those entities might have benefitted from the catch limit and the closure.

Opportunity (1)(c), entering into a Section 113(a) arrangement with a U.S. Participating Territory, would be available to all affected entities in 2013; it is not known whether it would be available in 2014. This is the same opportunity that was available in 2011 and 2012 when prior Section 113(a) was in effect. In those two years, the vessels of the members of the Hawaii Longline Association (HLA) were included in a Section 113(a) arrangement with American Samoa, and as a result, the catch limit was not reached in either year, and no longline vessels were subject to the restrictions that would

have gone into effect had the limit been reached. This option would likely not come without cost—at least one of the three Participating Territories would have to agree to the arrangement. As an indication of the possible cost, the terms of the arrangement between American Samoa and the members of the HLA that applied in 2011 and 2012 included payments totaling \$250,000 from the HLA to the Western Pacific Sustainable Fisheries Fund, equal to \$2,000 per vessel in the arrangement (it is not known how the total cost was allocated among the members of the HLA, so it is possible that the owners of particular vessels paid substantially more than or less than \$2,000).

With respect to alternative opportunity (2), deep-set fishing for bigeye tuna in the EPO, this would be an option for affected entities only if it is allowed under regulations implementing the decisions of the Inter-American Tropical Tuna Commission (IATTC). Currently there is a bigeye tuna catch limit of 500 mt for 2013 that applies to U.S. longline vessels greater than 24 meters (m) in length. It is presently not known whether the limit will be reached in 2013. Annual longline bigeye tuna catch limits have been in place for the EPO in most years since 2004, but since 2009, when the limit was 500 mt and applicable only to vessels longer than 24 m in length, the limits have not been reached. The IATTC is scheduled to consider needed management measures for 2014 and beyond for the tropical tuna stocks at its annual meeting in June 2013, but it is not known whether it will maintain or modify its current bigeye tuna longline catch limit provisions, which are in effect through 2013.

Historical fishing patterns can provide an indication of the likelihood of affected entities making use of the opportunity of deep-setting in the EPO in the event of a closure in the WCPO. The proportion of the U.S. fishery’s annual bigeye tuna catches that were captured in the EPO from 2005 through 2008 ranged from 2 percent to 22 percent, and averaged 11 percent. In 2005–2007, that proportion, which ranged from 2 percent to 11 percent, may have been constrained by the bigeye tuna catch limits established by NMFS to implement the decisions of the IATTC.

Prior to 2009, most of the U.S. annual bigeye tuna catch by longline vessels in the EPO typically was made in the second and third quarters of the year: in 2005–2008 the percentages caught in the first, second, third, and fourth quarters were 14, 33, 50, and 3 percent, respectively. These two historical

patterns—that relatively little of the bigeye tuna catch in the longline fishery was typically taken in the EPO (11 percent in 2005–2008, on average) and that most EPO bigeye tuna catches were made in the second and third quarters, with relatively few catches in the fourth quarter, when the proposed catch limit would most likely be reached, suggest that there could be substantial costs for at least some affected entities to shift to deep-set fishing in the EPO in the event of a closure in the WCPO. On the other hand, fishing patterns in 2009–2012, when annual bigeye tuna catch limits were in effect in the WCPO, suggest that a substantial shift in deep-set fishing effort to the EPO could occur. In 2009, 2010, 2011, and 2012, the proportions of the fishery’s annual bigeye tuna catches that were captured in the EPO were about 16, 27, 22, and 19 percent, respectively. And during that three-year period, on average, the proportions caught in the first, second, third, and fourth quarters were 7, 14, 41, and 37 percent, respectively. Thus, a substantial amount of fishing occurred in the EPO in the fourth quarters of 2009–2012, when WCPO catch limits were in place (the limits were reached in 2009 and 2010). However, the NMFS study of the 2010 closure (Richmond *et al.* 2012) found that some businesses—particularly those with smaller vessels—were less inclined than others to fish in the EPO during the closure because of the relatively long distances that would need to be travelled in the relatively rough winter ocean conditions. The study identified a number of factors that likely made fishing in the EPO less lucrative than fishing in the WCPO during that part of the year, including fuel costs and the need to limit trip length in order to maintain fish quality and because of limited fuel storage capacity.

In addition to affecting the volume of landings of bigeye tuna and other species, the proposed catch limit could affect fish prices, particularly during a fishery closure. Both increases and decreases appear possible. After the limit is reached and landings from the WCPO are prohibited, ex-vessel prices of bigeye tuna (e.g., that are caught in the EPO or by vessels in the longline fisheries of the three U.S. Participating Territories), as well as of other species landed by the fleet, could increase as a result of the constricted supply. This would mitigate economic losses for vessels that are able to continue fishing and landing bigeye tuna during the closure. For example, the NMFS study of the 2010 closure (Richmond *et al.* 2012) found that ex-vessel prices during

the closure in December were 50 percent greater than the average during the previous five Decembers (it is emphasized that because it was an observational study, neither this nor other observations of what occurred during the closure can be affirmatively linked as effects of the fishery closure). Conversely, a WCPO bigeye tuna fishery closure could cause a decrease in ex-vessel prices of bigeye tuna and other products landed by affected entities if the interruption in the local supply prompts the Hawaii market to shift to alternative (e.g., imported) sources of bigeye tuna. Such a shift could be temporary—that is, limited to 2013 and/or 2014, or it could lead to a more permanent change in the market (e.g., as a result of wholesale and retail buyers wanting to mitigate the uncertainty in the continuity of supply from the Hawaii longline fisheries). In the latter case, if locally caught bigeye tuna fetches lower prices because of stiffer competition with imported bigeye tuna, then ex-vessel prices of local product could be depressed indefinitely. The NMFS study of the 2010 closure (Richmond *et al.* 2012) found that a common concern in the Hawaii fishing community prior to the closure in November 2010 was retailers having to rely more heavily on imported tuna, causing imports to gain a greater market share in local markets. The study found this not to have been borne out, at least not in 2010, when the evidence gathered in the study suggested that few buyers adapted to the closure by increasing their reliance on imports, and no reports or indications were found of a dramatic increase in the use of imported bigeye tuna during the closure. The study concluded, however, that the 2010 closure caused buyers to give increased consideration to imports as part of their business model, and it was predicted that tuna imports could increase during any future closure. To the extent that ex-vessel prices would be reduced by this action, revenues earned by affected entities would be affected accordingly, and these impacts could occur both before and after the limit is reached, and as described above, possibly after 2014.

The potential economic effects identified above would vary among individual business entities, but it is not possible to predict the range of variation. Furthermore, the impacts on a particular entity would depend both on that entity's response to the proposed rule and to the behavior of other vessels in the fleet, both before and after the catch limit is reached. For example, the greater the number of vessels that take advantage—before the limit is reached—

of opportunity (1), fishing as part of one of the Participating Territory's fisheries, the lower the likelihood that the limit would be reached. The fleet's behavior in 2011 and 2012 is illustrative. In both those years, most vessels in the Hawaii fleet were included in a Section 113(a) arrangement with American Samoa, and as a consequence, the catch limit was not reached in either year. Thus, none of the vessels in the fleet, including those not included in the Section 113(a) arrangement, were prohibited from fishing for bigeye tuna in the Convention Area at any time during those two years. The fleet's experience in 2010 (before opportunities under prior Section 113(a) were available) provides another example of how economic impacts could be distributed among different entities. In 2010 the limit was reached and the WCPO bigeye tuna fishery was closed on November 22. As described above, dual permit vessels were able to continue fishing (outside the U.S. EEZ around the Hawaiian Archipelago) and benefit from the relatively high ex-vessel prices that bigeye tuna fetched during the closure.

In summary, NMFS has estimated upper bounds on the potential economic impacts of the proposed rule on affected entities, but the actual impacts to most entities are likely to be substantially less than those upper bounds, and for some entities the impacts could be neutral or positive.

Disproportionate Impacts

As indicated above, most or all affected entities are believed to be small entities, in which case small entities would not be disproportionately affected relative to large entities. However, as described above, there could be disproportionate impacts according to vessel size. The 500 mt EPO bigeye catch limit for 2013 applies only to vessels greater than 24 m in length, so in the event that the WCPO bigeye tuna fishery is closed and the 500 mt limit is reached in the EPO, only vessels 24 m or less in length would be able to take advantage of the alternative opportunity of deep-setting for bigeye tuna in the EPO. On the other hand, smaller vessels can be expected to find it more difficult, risky, and/or costly to fish in the EPO during the relatively rough winter months than larger vessels. If there are any large entities among the affected entities, and if the vessels of the large entities are larger than those of small entities, then it is possible that small entities could be disproportionately affected relative to large entities. All the affected entities are longline fishing businesses, so there would be no disproportionate economic

impacts based on fishing gear. No disproportionate economic impacts based on home port would be expected.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal rules that duplicate, overlap or conflict with the proposed rule.

Alternatives to the Proposed Rule

NMFS has not identified any significant alternatives to the proposed rule, other than the no-action alternative. Taking no action could result in lesser adverse economic impacts than the proposed action for many affected entities (but as described above, for some affected entities, the proposed rule could be more economically beneficial than no-action), but NMFS has determined that the no-action alternative would fail to accomplish the objectives of the WCPFC Implementation Act, including satisfying 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: June 11, 2013.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 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. Section 300.224 is revised to read as follows:

§ 300.224 Longline fishing restrictions.

(a) *Establishment of bigeye tuna catch limit.* There is a limit of 3,763 metric tons of bigeye tuna that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States during each of the calendar years 2013 and 2014.

(b) *Exception for bigeye tuna landed in territories.* Bigeye tuna landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands will be attributed to the longline fishery of the territory in which it is

landed and will not be counted against the limit established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(c) *Exception for bigeye tuna caught by vessels with American Samoa Longline Limited Access Permits.* Bigeye tuna caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.801(c) of this title will be attributed to the longline fishery of American Samoa and will not be counted against the limit established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(d) *Exception for bigeye tuna caught by vessels included in Section 113(a) arrangements.* Bigeye tuna caught in 2013 by a vessel that is included in an arrangement under the authorization of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), will be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, according to the terms of the arrangement to the extent they are consistent with this section and applicable law, and will not be counted against the limit, provided that:

(1) NMFS has received a copy of the arrangement from the vessel owner or a designated representative at least 14 days prior to the date the bigeye tuna was caught, except that this requirement shall not apply to any arrangement provided to NMFS prior to the effective date of this paragraph;

(2) The bigeye tuna was caught on or after the “start date” specified in paragraph (g)(2) of this section; and

(3) NMFS has determined that the arrangement satisfies the requirements of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), in

accordance with the criteria specified in paragraph (g)(3) of this section.

(e) *Announcement of catch limit being reached and fishing prohibitions.* NMFS will monitor retained catches of bigeye tuna with respect to the limit established under paragraph (a) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit is expected to be reached by a specific future date, and at least seven calendar days in advance of that specific future date, NMFS will publish a notice in the **Federal Register** announcing that specific prohibitions will be in effect starting on that specific future date and ending December 31 of that calendar year.

(f) *Prohibitions after catch limit is reached.* Once an announcement is made pursuant to paragraph (e) of this section, the following restrictions will apply during the period specified in the announcement:

(1) A fishing vessel of the United States may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(i) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. The 14-day landing requirement does not apply to a vessel that has declared to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting.

(ii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(iii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.801(c) of this title, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(iv) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed in 2013 if they were caught by a vessel that is included in an arrangement under the authorization of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), if the arrangement provides for the bigeye tuna when caught to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) NMFS has received a copy of the arrangement at least 14 days prior to the activity (i.e., the retention on board, transshipment, or landing), unless NMFS has received a copy of the arrangement prior to the effective date of this section;

(B) The “start date” specified in paragraph (g)(2) of this section has occurred or passed; and

(C) NMFS has determined that the arrangement satisfies the requirements of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Pub. L. 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), in accordance with the criteria specified in paragraph (g)(3) of this section.

(2) Bigeye tuna caught by longline gear in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(3) A fishing vessel of the United States may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (e) of this section, in which case the bigeye tuna on board the vessel may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. This prohibition does not apply to a vessel

that catches bigeye tuna that is to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands in accordance with paragraphs (b), (c), or (d) of this section, or to a vessel for which a declaration has been made to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting.

(4) If a fishing vessel of the United States, other than a vessel that catches bigeye tuna that is to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, in accordance with paragraphs (b), (c), and (d) of this section, or a vessel for which a declaration has been made to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting, is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must, while it is in the Convention Area, be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

(g) *Procedures and conditions for Section 113(a) arrangements.* This paragraph establishes procedures to be followed and conditions that must be met in 2013 with respect to arrangements authorized under Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013). These

procedures and conditions apply to paragraphs (d), (f)(1)(iv), (f)(3), and (f)(4) of this section.

(1) For the purpose of this section, the “pre-Section 113(a) attribution forecast date” is the date the catch limit established under paragraph (a) of this section is forecast by NMFS to be reached in the calendar year, assuming that no catches would be attributed to the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands under arrangements authorized under Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013). Since forecasts are subject to change as new information becomes available, NMFS will use for this purpose the first forecast it prepares that indicates that the date of the limit being reached is less than 28 days after the date the forecast is prepared.

(2) For the purpose of this section, the “start date” for attribution of catches to the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands for a particular arrangement is:

(i) Seven days before the pre-Section 113(a) attribution forecast date, for arrangements copies of which are received by NMFS no later than the date NMFS determines the pre-Section 113(a) attribution forecast date; and

(ii) Seven days before the pre-Section 113(a) attribution forecast date or 14 days after the date that NMFS receives a copy of the arrangement, whichever is later, for arrangements copies of which are received by NMFS after the date NMFS determines the pre-Section 113(a) attribution forecast date.

(3) NMFS will determine whether an arrangement satisfies the requirements

of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Pub. L. 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), for the attribution of bigeye tuna to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands according to the following criteria:

(i) Vessels included under the arrangement must be registered for use with valid permits issued under the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region;

(ii) The arrangement must not impose any requirements regarding where the vessels included in the arrangement must fish or land their catch;

(iii) The arrangement must be signed by the owners of all the vessels included in the arrangement or their designated representative(s);

(iv) The arrangement must be signed by an authorized official of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands or his or her designated representative(s); and

(v) The arrangement must be funded by deposits to the Western Pacific Sustainable Fisheries Fund in support of fisheries development projects identified in the Marine Conservation Plan of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands adopted pursuant to section 204 of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) NMFS will notify the parties to the arrangement or their designated representative(s) within 14 days of receiving a copy of the arrangement, if the arrangement does not meet the criteria specified in paragraph (g)(3) of this section.

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