

from the public, government agencies, the scientific community, industry, and any other interested parties on the status of the ribbon seal and other ice seals throughout their range, including:

(1) Information on taxonomy, abundance, reproductive success, age structure, distribution, habitat selection, food habits, population density and trends, habitat trends, and effects of management on ribbon seals and other ice seals;

(2) Information on the effects of climate change and sea ice change on the distribution and abundance of ribbon seals, and other ice seals, and their principal prey over the short- and long-term;

(3) Information on the effects of other potential threat factors, including oil and gas development, contaminants, hunting, and poaching, on the distribution and abundance of ribbon seals, and other ice seals, and their principal prey over the short- and long-term;

(4) Information on management programs for ribbon seal conservation, including mitigation measures related to oil and gas exploration and development, hunting conservation programs, anti-poaching programs, and any other private, tribal, or governmental conservation programs which benefit ribbon seals and other ice seals; and

(5) Information relevant to whether any populations of the ice seal species may qualify as distinct population segments.

We will base our findings on a review of the best scientific and commercial information available, including all information received during the public comment period.

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 25, 2008.

**Samuel D. Rauch III,**

*Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 080118059-8067-01]

RIN 0648-AW41

#### South Pacific Tuna Fisheries; Establishment of Limits on Entry or Effort in the Purse Seine Fishery in the Western and Central Pacific Ocean

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

**ACTION:** Advance notice of proposed rulemaking; notification of control date; request for comments.

**SUMMARY:** NMFS announces that persons who enter the purse seine fishery in the western and central Pacific Ocean (WCPO), as managed under the South Pacific Tuna Act of 1988 (SPTA), the Western and Central Pacific Convention Implementation Act (WCPFCIA) and other law, after March 28, 2008 ("control date"), are not guaranteed future participation in the fishery if NMFS decides to revise the criteria and procedures used to process license applications and/or to limit further the number of licenses available in the fishery. NMFS is considering the need to undertake such actions in order to provide greater clarity about the process used and thus help license holders and prospective license applicants in making business decisions, as well as to fulfill the obligations of the United States under international agreements to which it is party. This action does not commit NMFS to revising the criteria and procedures it uses or to establishing a new limit, and it does not prevent any other date or criteria from being selected for eligibility to participate in the fishery.

**DATES:** Comments must be submitted in writing by April 28, 2008.

**ADDRESSES:** You may submit comments on this advance notice of proposed rulemaking by any of the following methods:

- Federal e-Rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: William L. Robinson, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Include the identifier "0648-AW41" in the comments.

- Fax: 808-973-2941. Include the identifier "0648-AW41" in the comments.

Instructions: All comments received are part of the public record and will generally 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 publically accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

#### SUPPLEMENTARY INFORMATION:

#### Background

The WCPO purse seine fishery is regulated primarily under the authority of the SPTA (16 U.S.C. 973-973r) via implementing regulations at 50 CFR part 300, subpart D. The SPTA and its implementing regulations implement the terms of a treaty between the United States and 16 Members of the Pacific Islands Forum Fisheries Agency (Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America and its annexes, schedules, and implementing agreements, as amended; hereafter called "the Treaty"). The Treaty governs the conduct of U.S. fishing vessel operations in the Treaty Area. The Treaty Area, which is defined at 50 CFR 300.31, encompasses approximately 10 million square miles (26 million square kilometers). The Treaty provides access by U.S. purse seine vessels to a large portion of the WCPO by authorizing, and regulating through a licensing system, U.S. purse seine vessels operations within all or part of the exclusive economic zones (EEZs) of the 16 Pacific Island Parties to the Treaty (PIPs). Licenses are issued by the Pacific Islands Forum Fisheries Agency (FFA), based in Honiara, Solomon Islands, which acts as the Treaty administrator on behalf of the PIPs.

The Treaty and SPTA and its implementing regulations allow U.S. longline vessels and U.S. vessels fishing for albacore by the trolling method to fish in the high seas portion of the Treaty Area, but such vessels are not subject to the Treaty's or SPTA's licensing requirements.

The Treaty entered into force in 1988 following ratification by the U.S. and the PIPs. After an initial 5-year

agreement, the Treaty was renewed in 1993 for an additional 10 years and renewed again in 2003 for an additional 10 years (through June 14, 2013). Currently, the Treaty allows for a maximum of 45 licenses to U.S. purse seine fishing vessels to fish in the Licensing Area of the Treaty. Of the 45 licenses, 5 are reserved for "joint venture" arrangements with PIPs. The Licensing Area includes all or part of the EEZs of the following countries: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. Licenses are issued by the FFA, but license applications are first submitted to NMFS, which ensures they are complete and forwards them to the FFA on a first-come, first-served basis.

In addition to being governed by the Treaty and the SPTA, the WCPO purse seine fishery is subject to the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), particularly with respect to the operation of the fishery within the U.S. EEZ. The fishery is also subject to the authority of the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*), which governs the conduct of U.S. fishing vessels on the high seas. The fishery also falls under the purview of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA) (Public Law 109-479, sec 501-511), which implements the provisions of the Western and Central Pacific Fisheries (WCPF) Convention and the decisions of the WCPF Commission, established under the Convention. The area of competence of the WCPF Commission, or the Convention Area, includes the majority of the Treaty Area. As a Party to the WCPF Convention and a Member of the WCPF Commission, the United States is obligated to implement the decisions of the Commission. To date, the Commission has made several decisions that might affect the level of activity of the WCPO purse seine fishery, including decisions related to allowable levels of fishing capacity (e.g. numbers of vessels or some other measure of fishing power present in the fishery) as well as allowable levels of fishing effort (e.g. numbers of days fished or sets made per unit of time). These decisions can be found on the web site of the WCPF Commission (<http://www.wcpfc.int/>).

### Recent Developments in the Fishery

The number of U.S. purse seine vessels licensed under the Treaty has varied widely since its entry into force in 1988. The number of licensed vessels reached a high of 49 in 1994 (at which time the Treaty authorized up to 55 licenses, with 5 reserved for joint ventures) and a low of 11 in 2007. As of February 2008, there were 22 licenses issued and several additional license applications were being processed. No joint venture licenses have been issued under the Treaty.

### Establishment of Control Date and Possible Rulemaking

In part because of the recent increase in the number of purse seine vessel licenses issued and applications pending under the Treaty, NMFS is considering clarifying, and possibly revising, the criteria and procedures used to process license applications. Such clarification would help both current license holders and prospective license applicants in making future business decisions.

Also, in order to comply with the decisions of the WCPF Commission and to implement the provisions of the WCPFCIA, NMFS may be required to limit the number of vessels in the WCPO purse seine fishery. This rulemaking may be used to implement future actions in that fishery.

In addition, on August 15, 2005, NMFS published an advance notice of proposed rulemaking (70 FR 47782) that established a control date of June 2, 2005, applicable to persons contemplating entering the purse seine fishery in the U.S. EEZ in the western Pacific region (the control date also applied to persons interested in the longline fishery in the western Pacific region). That decision was based on a recommendation made by the Western Pacific Fishery Management Council on June 2, 2005, at its 127th meeting. The control date is limited in application (with respect to purse seine vessels) to vessels that operate within the U.S. EEZ. This control date has not yet been acted on. The control date announced here applies more broadly than the June 2, 2005, control date: it applies to purse seine vessels that are subject to the Treaty and the SPTA; that is, to purse seine vessels operating anywhere on the high seas in the Treaty Area or in the EEZs of the 16 PIPs. The June 2, 2005, control date for the U.S. EEZ also remains in effect.

One purpose of this advance notice of proposed rulemaking is to notify fishermen that if they attempt to enter the WCPO purse seine fishery after the control date of March 28, 2008, there is no assurance of being granted entry or of future participation if all available licenses have been issued or if NMFS must limit the number of available licenses or impose other management measures in the fishery.

The second purpose is to solicit comments and input on possible criteria and procedures that could be used by NMFS to review, order, and process license applications. These criteria and procedures would be used by NMFS in determining eligibility for processing applications and requesting the FFA to provide licenses for US purse seine vessels operating in this fishery.

Establishment of this control date does not commit NMFS to any particular management regime or any particular criteria for limiting entry into the WCPO purse seine fishery. Fishermen are not guaranteed future participation in the fishery, regardless of their level of participation before or after the control date. NMFS might adopt a different control date or it might adopt a management regime that does not involve a control date. Any number of possible criteria might be used to determine eligibility for participation in the fishery, including criteria involving date of license application (e.g. first-come-first-served), historical participation (e.g. history of licenses or landings), vessel size or capacity, or a vessel hull's country of origin, among others.

If and until NMFS issues a final rule to clarify and/or revise the process it uses to process license applications, NMFS will continue its practice of doing so on a first-come, first-served basis.

### Classification

This advance notice of proposed rulemaking has been determined to be not significant for the purposes of Executive Order 12866.

**Authority:** 16 U.S.C. 973-973r; PL 109-479 sec 501-511; 16 U.S.C. 5501 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: March 24, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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