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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 300

[Docket No. 110209128-2641-02]

RIN 0648-BA85

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Transshipping, Bunkering, Reporting, and Purse Seine Discard Requirements

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to implement requirements for U.S. fishing vessels used for commercial fishing that offload or receive transshipments of highly migratory species (HMS), U.S. fishing vessels used for commercial fishing that provide bunkering or other support services to fishing vessels, and U.S. fishing vessels used for commercial fishing that receive bunkering or engage in other support services, 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). Some of the requirements also apply to transshipments of fish caught in the area of application of the Convention (Convention Area) and transshipped elsewhere. NMFS also issues requirements regarding notification of entry into and exit from the “Eastern High Seas Special Management

Area” (Eastern SMA) and requirements relating to discards from purse seine fishing vessels. This action is necessary for the United States to implement decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC) and to satisfy its obligations under the Convention, to which it is a Contracting Party.

DATES: This rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of supporting documents that were prepared for this final rule, including the regulatory impact review (RIR) and the Environmental Assessment (EA), as well as the proposed rule, are available via the Federal e-Rulemaking portal, at <http://www.regulations.gov>. Those documents, and the small entity compliance guide(s) prepared for this final rule, are also available from NMFS at the following address: Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700. The initial regulatory flexibility analysis (IRFA) and final regulatory flexibility analysis (FRFA) prepared under the authority of the Regulatory Flexibility Act (RFA) are included in the proposed rule and this final rule, respectively.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above) and by email to OIRA_Submission@omb.eop.gov or fax to (202) 395-7285.

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

SUPPLEMENTARY INFORMATION:

Background

On February 15, 2012, NMFS published a proposed rule in the Federal Register (77 FR 8759) to revise regulations at 50 CFR part 300, subpart O, in order to implement certain decisions of the WCPFC. The proposed rule was open to public comment through April 16, 2012.

This final rule is issued under the authority of the WCPFC Implementation Act (16 U.S.C. 6901 et seq.), which 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 authority to promulgate regulations has been delegated to NMFS.

This final rule implements provisions in Conservation and Management Measures (CMMs) adopted by the WCFPC, particularly CMMs 2009-06, 2009-01, 2010-02, and 2009-02. The preamble to the proposed rule includes further background information, including information on the Convention and the WCPFC, as well as detailed information about each of the CMMs being implemented in this rule, and the basis for the proposed regulations.

New Requirements

This final rule establishes the following requirements:

1. Transshipment Reporting Requirements

The owner and operator (operator means, with respect to any vessel, the master or other individual aboard and in charge of that vessel) of any U.S. fishing vessel used for commercial fishing that transships HMS in the Convention Area, whether from an offloading vessel or to a

receiving vessel, or that transships HMS caught in the Convention Area, whether from an offloading vessel or to a receiving vessel, is required to ensure the completion of and submission to NMFS of a transshipment report for each transshipment. The form required to be used for these reports is available from the NMFS Pacific Islands Regional Administrator. A separate report is required for each transshipment.

The information specified on the report form must be recorded on the form within 24 hours of completion of the transshipment. The requirements for transshipments on the high seas and for emergency transshipments (i.e., a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage) that would otherwise be prohibited are slightly different than the requirements for all other transshipments. For transshipment on the high seas and for emergency transshipments that would otherwise be prohibited, the report must be submitted by email or fax to the address specified by the NMFS Pacific Islands Regional Administrator no later than 10 calendar days after completion of the transshipment. The report can be submitted without signatures to accommodate vessels that remain at sea for more than 10 days after completion of the transshipment and that do not have fax or email capabilities. In such circumstances, for example, the information required on the form could be communicated via radio to a shore agent, and the shore agent could email or fax the form to NMFS within the 10-day deadline, which would enable NMFS to submit the report to the Commission within the 15-day due date under CMM 2009-06.

The original, signed copy of the report for high seas or emergency transshipments must be submitted to the address specified on the form no later than 15 calendar days after the vessel

first enters into port, or 15 calendar days after the transshipment for emergency transshipments in port.

For all other transshipments (i.e., transshipments that do not take place on the high seas and that are not emergency transshipments), if the transshipment is subject to transshipment reporting requirements in 50 CFR part 300 subpart D, 50 CFR part 660, or 50 CFR part 665, the original transshipment report must be submitted by the due date for submitting the transshipment reports specified in those regulations. If the vessel owner and operator are not subject to any of the above-referenced transshipment reporting requirements, for transshipments at sea the report must be submitted no later than 72 hours after the vessel first enters into port; for transshipments in port, the report must be submitted no later than 72 hours after completion of the transshipment. These reporting requirements do not apply to transshipments that take place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only include fish caught within such waters.

As noted in the preamble to the proposed rule, NMFS has developed a specific form, the Pacific Transshipment Declaration Form, to be used for the transshipment reporting requirements.

2. Prior Notice for High Seas Transshipments and Notice of Emergency Transshipments

For any transshipment of HMS on the high seas in the Convention Area or on the high seas anywhere of HMS that were caught in the Convention Area that is not prohibited (e.g., high seas transshipments by vessels other than purse seine vessels), vessel owners and operators must ensure the submission to the Commission of notice of the transshipment at least 36 hours prior to the transshipment. The notice must be provided by fax or email in the format specified by the

NMFS Pacific Islands Regional Administrator as specified in this rule. The notice must include the following information: (1) the name of the offloading vessel; (2) the vessel identification markings located on the hull or superstructure of the offloading vessel; (3) the name of the receiving vessel; (4) the vessel identification markings located on the hull or superstructure of the receiving vessel; (5) the expected amount, in metric tons, of the fish product being transshipped, broken down by species and processed state; (6) the expected date or dates of the transshipment; (7) the expected location of transshipment, including latitude and longitude to the nearest tenth of a degree; (8) an indication of which one of the following areas the expected transshipment location is situated: high seas inside the Convention Area, high seas outside the Convention Area, or an area under the jurisdiction of a particular nation – in which case the nation must be specified; and (9) the geographic location of the catch to be transshipped, as described by: the expected amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: inside the Convention Area on the high seas, outside the Convention Area on the high seas, and within areas under the jurisdiction of a particular nation, with each such nation and the associated amount specified. Information regarding the geographic location of the catch is not required, however, if the reporting vessel is the receiving vessel. The transshipment must take place within 24 nautical miles of the expected location provided in the notice.

Notice is also required for emergency transshipments that would otherwise be prohibited. For each transshipment that qualifies as an emergency transshipment, the owner or operator of the offloading and receiving vessels must ensure delivery of the notice directly to the Commission by fax or email within 12 hours of completion of the transshipment, and must ensure the notice includes the same information described above for the notice for high seas

transshipments, as well as a description of the reasons for the emergency transshipment, in the format specified by the NMFS Pacific Islands Regional Administrator . The transshipment must take place within 24 nautical miles of the location provided in the notice.

This final rule allows emergency transshipments involving purse seine vessels to take place at sea in the Convention Area. Such transshipments were prohibited prior to the effective date of this final rule (see 50 CFR 300.216).

A copy of each notice must be submitted to NMFS by the same due dates specified for submission to the Commission: that is, at least 36 hours prior to the start of such transshipment on the high seas or within 12 hours after completion of an emergency transshipment.

3. Observer Coverage for Transshipments at Sea

Transshipments at sea in the Convention Area require observer coverage for vessels, with the specific requirements dependent upon the type of vessel and the type of fish to be transshipped. Observer coverage is not required for emergency transshipments at sea or for transshipments that take place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught in such waters. The observers are required to be WCPFC Observers. Observers deployed by NMFS are currently considered WCPFC Observers, as the program has completed the required authorization process to become part of the WCPFC Regional Observer Programme (ROP). For most transshipments, an observer is required on board the receiving vessel. However, for transshipments to a receiving vessel less than or equal to 33 meters in registered length, and not involving purse seine-caught fish or frozen longline-caught fish, the observer may be deployed on either the offloading vessel or receiving vessel. All involved vessel owners and operators are required to ensure that a WCPFC Observer is on board

one of the two vessels to monitor the transshipment for the duration of the transshipment, even when the requirement to carry an observer falls on the other vessel involved in the transshipment (e.g., in those cases when the observer requirement applies only to the receiving vessel). The owner or operator of a vessel requiring an observer for transshipments at sea must ensure that notice is provided to the NMFS Pacific Islands Regional Administrator at least 72 hours (excluding weekends and Federal holidays) before the vessel leaves port on the fishing trip indicating the need for an observer. The notice will need to include the official number of the vessel, the name of the vessel, the intended date, time and location of departure, the name of the vessel operator, and a telephone number at which the vessel owner, vessel operator, or a designated agent may be contacted during the business day (8 a.m. to 5 p.m. Hawaii Standard Time). The notice must be provided to the office or telephone number designated by the NMFS Pacific Islands Regional Administrator. If applicable, notice may be provided in conjunction with the notice required under 50 CFR 665.803(a), which requires the permit holder, or designated agent, for any vessel registered for use under a Hawaii longline limited access permit, or for any vessel greater than 40 feet length overall that is registered for use under an American Samoa longline limited access permit, to notify NMFS at least 72 hours (excluding weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the U.S. EEZ around the Hawaiian Archipelago or American Samoa.

In addition, a receiving vessel must receive product from only one offloading vessel at a time for each observer that is available to monitor the transshipment; the observer may be on the offloading or receiving vessel. Accordingly, if only one WCPFC Observer is available, the receiving vessel must receive HMS from only one offloading vessel at a time.

Operators and crew members of vessels carrying observers under these requirements are subject to general requirements regarding WCPFC Observers at 50 CFR 300.215, such as providing any WCPFC Observer on board the vessel with full access to the vessel, as well as access to information and data sources.

4. Categories of Vessels with which Transshipping and Bunkering May Be Conducted

The owner and operator of any U.S. fishing vessel used for commercial fishing for HMS must ensure that any vessel with which they engage in transshipment (to or from) in the Convention Area, or engage in bunkering or other support activities (to or from) in the Convention Area, falls into one of the three following categories. The vessel must be: (1) flagged by a WCPFC Member or Cooperating Non-Member; (2) on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels (Interim Register), which is available at <http://www.wcpfc.int/>; or (3) on the WCPFC Record of Fishing Vessels, which is available at <http://www.wcpfc.int/>. NMFS notes that the Interim Register is tentatively scheduled to expire in 2013, at which point no vessels would fall in this category. Only fishing vessels that are authorized to be used for fishing in the U.S. EEZ may transship and/or bunker in the U.S. EEZ. These requirements for transshipments do not apply to emergency transshipments or transshipments that take place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only include fish caught within such waters.

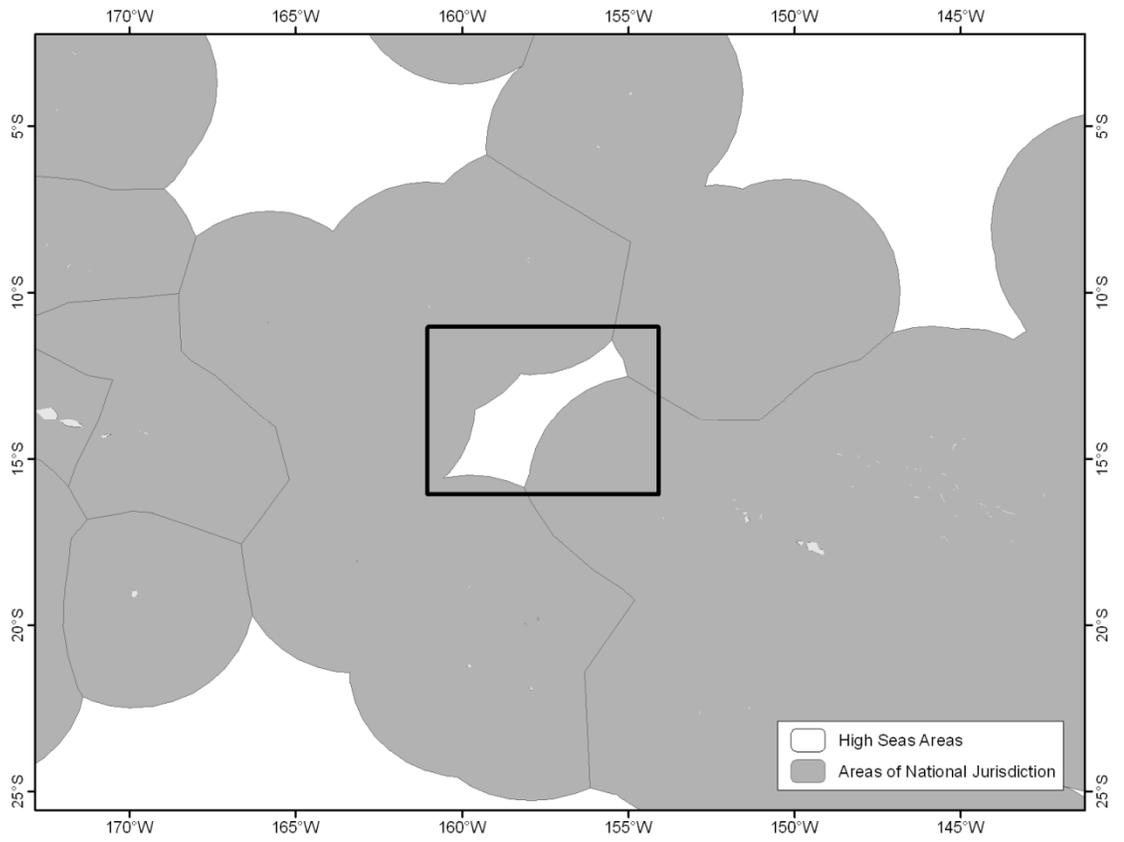
5. Requirements Regarding Notification of Entry into and Exit from Eastern SMA

The owner or operator of any U.S. fishing vessel used for commercial fishing must ensure the submission of a notice to the Commission containing specific information at least six hours prior to entry and no later than six hours prior to exiting the Eastern SMA (see Figure 1,

below). The notices must be submitted in the format specified by the NMFS Pacific Islands Regional Administrator. The notices must be submitted via fax or email and must include the following information: (1) the vessel identification markings located on the hull or superstructure of the vessel; (2) whether the notice is for entry or exit; (3) date and time of anticipated point of entry or exit; (4) latitude and longitude of anticipated point of entry or exit; (5) amount of fish product on board at the time of the report, in kilograms, in total and for each of the following species or species groups: yellowfin tuna, bigeye tuna, albacore, skipjack tuna, swordfish, shark, other; and (6) an indication of whether the vessel has engaged in or will engage in any transshipments while in the Eastern SMA. A copy of the notice must be provided to NMFS at least six hours prior to the entry and no later than six hours prior to the exit.

The map in Figure 1 shows the Eastern SMA as the high seas area within the rectangle bounded by the bold black lines.

Figure 1. Eastern SMA. Areas of high seas are indicated in white; areas of claimed national jurisdiction, including territorial seas, archipelagic waters, and EEZs, are indicated in dark shading. The Eastern SMA is the high seas area (in white) within the rectangle bounded by the bold black lines. This map displays indicative maritime boundaries only.



6. Requirements Regarding Discards from Purse Seine Fishing Vessels

The owner or operator of any U.S. purse seine fishing vessel must ensure the submission of a report containing specific information to the Commission and a copy of the report to NMFS no later than 48 hours after any discard at sea of bigeye tuna (Thunnus obesus), yellowfin tuna (Thunnus albacares), or skipjack tuna (Katsuwonus pelamis). The reports must be submitted in the format specified by the NMFS Pacific Islands Regional Administrator via fax or email. A specific form, the U.S. Purse Seine Discard Form (OMB Control Number 0648-0649), has been developed for this requirement. A hard copy of the report must be submitted to the observer on board the vessel.

7. Other Requirements

This final rule prohibits the transfer of fish at sea from a purse seine net deployed by or under the control of a fishing vessel of the United States to any other fishing vessel in the Convention Area. However, the rule includes a narrow exception that allows U.S. purse seine vessels to transfer fish through net sharing (i.e., the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one vessel to another fishing vessel) to other U.S. purse seine vessels on the final set of a trip when there is insufficient well space for the fish. The final rule also amends the regulatory definition of transshipment to exclude net sharing from the definition of transshipment as purse seine vessels are generally prohibited from engaging in transshipment of HMS at sea. Under the exception for net sharing, the purse seine vessel that transfers fish through net sharing is prohibited from making further purse seine sets during the remainder of its fishing trip.

Furthermore, in the U.S. EEZ, net sharing is allowed only between U.S. vessels that are authorized to be used for fishing in that area. In the event of a net share, the owner and operator

of the vessel that caught the fish must record the catch, as required under 50 CFR 300.34(c)(1), on the Regional Purse Seine Logsheet (RPL), and must note that the net sharing has taken place, in the manner specified by the NMFS Pacific Islands Regional Administrator, on the RPL. The owner and operator of the vessel that accepted the fish must note on the RPL for their vessel that the net sharing has taken place, in the manner specified by the NMFS Pacific Islands Regional Administrator.

In addition to the new requirements, the final rule amends the language that is in 50 CFR 300.223(d) to remove the termination date (December 31, 2012) applicable to the catch retention provision and includes some editorial changes to that language (i.e., from stating that “a fishing vessel of the United States equipped with purse seine gear may not discard at sea within the Convention Area any bigeye tuna, yellowfin tuna, or skipjack tuna” to stating that “an owner or operator of a fishing vessel of the United States equipped with purse seine gear must ensure the retention on board at all times while at sea within the Convention Area any bigeye tuna, yellowfin tuna, or skipjack tuna”). The final rule also corrects 50 CFR 300.222(y), which was inconsistent with 50 CFR 300.223(d)(3). Section 300.223(d)(3) states that the catch retention requirements are applicable to the entire Convention Area. However, § 300.222(y), which is a prohibitions section, stated that the prohibition on discarding fish at sea in contravention of § 300.223(d) is limited to the high seas and areas within the jurisdiction of the United States, including the U.S. EEZ and territorial sea between 20° N. latitude and 20° S. latitude. This final rule amends § 300.222(y) to amend the description of the requirement to state that the catch retention requirements are applicable to the entire Convention Area.

The final rule also includes a minor change to the wording of the language at 50 CFR 300.216(b) so that the terminology referring to U.S. purse seine vessels is consistent throughout

50 CFR part 300 subpart O. Specifically, the phrase “purse seine fishing vessel of the United States” is replaced with “fishing vessel of the United States equipped with purse seine gear.”

The final rule also modifies the prohibitions for at-sea transshipments for purse seine vessels. The final rule includes an additional prohibition for transshipments at sea involving purse seine vessels of fish caught in the Convention Area but transshipped outside of the Convention Area, and allows emergency transshipments involving purse seine vessels to take place at sea in the Convention Area.

Comments and Responses

NMFS received one comment letter on the proposed rule, with three distinct comments. Each comment is summarized below, followed by a response from NMFS.

Comment 1:

The basis for the prohibitions on net sharing provided in the proposed rule – that it would be difficult to keep track of fish – seems insufficient. The purse seine vessel receiving the fish would likely report the fish, since it would have the best estimate of the amount in the net share. It is also unclear how commonly net sharing among purse seine vessels takes place. If this is a matter of serious concern, a better explanation of the need for the prohibitions should be given. It would be worthwhile to exempt the transfer of live fish from one fishing vessel to another from this prohibition. Although vessels fishing in the eastern Pacific Ocean (EPO) will not likely be subject to these prohibitions on a frequent basis, in the past, there has been some confusion, since corrected, as to whether the prohibition on transshipping in the area of application of the IATTC applies to the transfer of live bluefin tuna.

Response:

As stated in the proposed rule, existing regulations at 50 CFR 300.223(d) require U.S. purse seine fishing vessels to retain all catch of bigeye tuna, yellowfin tuna, and skipjack tuna unless: (1) the fish are unfit for human consumption; (2) there is insufficient well space to accommodate all the fish captured in a given set, provided that no additional sets are made during the trip; or (3) serious malfunction of equipment occurs. Existing regulations at 50 CFR 300.216 prohibit purse seine vessels from conducting transshipments at sea in the Convention Area, consistent with Article 29 of the Convention. However, the existing catch retention provisions at 50 CFR 223(d) do not address whether net sharing falls within the definition of transshipment, which is prohibited at sea for purse seine vessels. As stated in Section 3.1.1.1 of the EA, NMFS estimates that approximately 10 percent of all U.S. purse seine trips in the WCPO include a net sharing event. This rule explicitly excludes net sharing activities from the definition of transshipment and implements a general prohibition on net sharing, as net sharing in most situations would not be consistent with the catch retention requirements.

However, the rule allows U.S. purse seine fishing vessels to conduct limited net sharing on the final set of a trip with other U.S. purse seine vessels, consistent with CMM 2008-01, which states that “excess fish taken in the last set may be transferred to and retained on board another purse seine vessel provided this is not prohibited under applicable national law.” As stated in the IRFA, NMFS considered the alternatives of allowing U.S. purse seine fishing vessels to conduct net sharing with foreign-flagged vessels, and allowing U.S. purse seine fishing vessels to conduct net sharing both to and from foreign-flagged vessels on the last set of the transferring vessel’s trip. Alternatives to allow net sharing on other than the last set would be inconsistent with CMM 2008-01, so were not considered. However, allowing net sharing to foreign-flagged vessels would make it difficult to ensure consistent counting of catches – for

example, the shared catch might be logged as catch by both the U.S. catcher vessel and the foreign-flagged vessel with which the catch is shared, resulting in inaccurate reporting. Allowing net sharing to and from foreign-flagged vessels would have the same shortcomings and would also be very difficult to enforce, as the United States would have limited ability to determine whether a foreign-flagged vessel complied with the last-set condition.

Regarding the commenter's recommendation to generally exempt the transfer of live fish from one vessel to another, net sharing of live fish on the final set of trip between U.S. purse seine fishing vessels is not prohibited under the new rule.

Finally, the net sharing requirements in this rule are applicable in the Convention Area, and do not apply in the EPO.

Comment 2:

Regarding the projected costs for observer coverage for transshipments at sea, a refrigerated carrier vessel that operates regularly in the Convention Area would likely have an observer on board, so the observer coverage requirements for troll vessels transshipping on the high seas would likely be covered. However, if a troll vessel wants to transship on the high seas to a carrier that is not already active in the Convention Area, the projected cost of the observer requirements does not include the following cost estimates: (1) cost in time and money to see that such a refrigerated carrier is properly registered; and (2) the cost of travel to get an observer accepted by the ROP of the WCPFC to and from the transshipping point. Although this may be seen as a business cost for transshipping, it is still a substantial cost that may well fall on the troll or pole-and-line vessels, and should at least be factored into the cost estimates.

Response:

Should a U.S. troll or pole-and-line vessel desire to transship to a foreign-flagged carrier vessel that is not already active in the Convention Area, and if the owner of the carrier vessel chooses to make the carrier vessel available for such transshipments by satisfying the various applicable WCPFC requirements, NMFS agrees that some of the costs of doing so could be passed on to fishing businesses that interact with the carrier vessel, such as the U.S. troll or pole-and-line fishing business. Such costs include the \$2,500 annual fee for registering a vessel on the Interim Register, the costs associated with participating in the WCPFC vessel monitoring system, and the costs associated with carrying WCPFC ROP observers, possibly including travel costs for the observer. NMFS notes that the cost of transporting a WCPFC Observer would depend on the circumstances, and could be minimal if a WCPFC Observer is available at the carrier vessel's port of departure and does not need further transportation from the port of return. NMFS also notes that the Interim Register is tentatively scheduled to expire in 2013. If some or all these costs are passed on by the owner/operator of the carrier vessel to fishing businesses that make use of the carrier vessel, NMFS expects that carrier vessels would be likely to work with multiple offloading vessels and would distribute the costs accordingly. The costs borne by any single U.S. troll or pole-and-line fishing business would be accordingly smaller than the total costs. NMFS has revised the RIR to acknowledge and reflect these possible costs incurred by U.S. fishing businesses. This comment is also relevant in the context of the FRFA, as discussed in the Classification section of this preamble.

Comment 3:

Regarding the notification of entry and exit to and from the Eastern SMA, the system set up for this entry and exit notification scheme is fatally flawed under international law, because States bordering a high seas pocket have no more right to know what is going on there than other

Commission members. If Kiribati, Cook Islands and French Polynesia are to receive special notifications, those notifications should be made to the Commission and be available to all Commission members.

While few, if any, U.S. albacore troll and pole-and-line vessels fish in the Eastern SMA, this area is close to various transit lines. That area is right along the track line going from Papeete, French Polynesia, to Majuro, Marshall Islands – both are important ports for the South Pacific albacore troll fishery. In the past, vessels in this fishery transshipped their fish in Papeete and then proceeded directly to Majuro for fueling before heading to fishing grounds in the North Pacific. Historically, as many as a dozen vessels made that circuit. The Eastern SMA is also very close to the track line going from Pago Pago, American Samoa, to Papeete. There is also a history of vessels proceeding from the South Pacific fishing grounds to Honolulu, and the Eastern SMA is near that track line. Thus, the proposed rule underestimates the frequency of U.S. troll and pole and line vessels transiting the Eastern SMA and associated costs.

Response:

NMFS notes the commenter's view that the system set up by the Commission for the Eastern SMA is flawed. This comment appears to be a general comment on the Commission's decision to adopt CMM 2010-02, which is beyond the scope of this rulemaking. The Commission exercised its authority pursuant to the Convention to adopt conservation and management measures for the high seas, which are implemented by members, including, where appropriate, by flag State members, in accordance with their jurisdiction and control over vessels flying their flag on the high seas. To the extent the comment alleges that NMFS' implementation of the notification scheme provided for in this final rule is inconsistent with international law, NMFS disagrees. In order to meet the international obligations of the United States as a member

of the Commission, and pursuant to the authority of the WCPFC Implementation Act, NMFS is implementing this provision of CMM 2010-02 via regulations. NMFS is unaware of any provisions of international law that this rulemaking would violate.

NMFS appreciates the additional information regarding the operational activity of the U.S. albacore troll and pole-and-line vessels near the Eastern SMA. However, the comment does not include any indication of the historical or current number of Eastern SMA entries and exits by such vessels on an annual basis. In the RIR issued with the proposed rule and in the IRFA, NMFS estimated that U.S. albacore troll vessels would enter the Eastern SMA between zero and two times per year and exit the same number of times. This estimate was based on readily available data regarding the fishing patterns of the fleet, indicating that the fishing grounds of this fleet are and have been in areas distant from the Eastern SMA. In order to take into consideration the commenter's information, NMFS has evaluated (unpublished) data from NMFS' vessel monitoring system (VMS) to determine the precise annual number of Eastern SMA entries and exits by vessels in this fleet. The VMS data indicate that U.S. albacore troll vessels entered the Eastern SMA zero times during 2011 and 2012 (2011 was the first full year in which U.S. albacore troll vessels fishing in the Convention Area were required to participate in the vessel monitoring system).

Given these recent data and the location of the traditional fishing grounds of the U.S. albacore troll fleet, NMFS believes that the estimate of zero to two entries per year (and zero to two exits per year) is reasonable and an appropriate basis on which to estimate the costs to the U.S. albacore troll fleet to satisfy the Eastern SMA entry and exit notification requirements. NMFS acknowledges that there has been limited activity by the albacore troll fleet in the Convention Area in recent years (see Table 10 in the EA indicating that the number of U.S.

albacore troll vessels operating in the South Pacific each year has numbered no more than six since 2007). Should the activity of the U.S. albacore troll fleet in the Convention Area return to the greater levels experienced in the past and should that increased activity include use of the historic lines of transit mentioned in the comment, the number and associated costs of the entry and exit notifications may be higher, possibly affecting as many as a dozen vessels each year, as noted by the commenter, or more. Although such a future scenario is possible, it, like other possible future scenarios, is speculative and does not warrant changes to the estimates used by NMFS as a basis to estimate the costs to affected U.S. fishing fleets.

Changes from the Proposed Rule

NMFS made some minor technical and non-substantive changes to the proposed rule in this final rule to remove ambiguities. Also, given the effective date the final rule, the provision that the at-sea observer provisions do not apply to transshipments to receiving vessels greater than 33 meters in registered length and involving only fish caught by troll gear and/or pole-and-line gear prior to January 1, 2013, has been removed. Due to an editorial error, the proposed rule indicated that a new, separate definition would be provided for the term “on board.” However, the definition of “on board” was included in the revised definition of transshipment and in the definition of net sharing in the proposed rule, which remain the same in this final rule. Also, although the regulatory text in the proposed rule specified that the purse seine discard reports would be required for discards of bigeye tuna, yellowfin tuna, or skipjack tuna, the proposed rule’s preamble incorrectly indicated that discards of fish, in general, would need to be reported. In addition, although the regulatory text in the proposed rule specified the editorial changes to the purse seine catch retention requirement, the proposed rule’s preamble did not mention these editorial changes (i.e., from stating that “a fishing vessel of the United States equipped with

purse seine gear may not discard at sea within the Convention Area any bigeye tuna, yellowfin tuna, or skipjack tuna” to stating that “an owner or operator of a fishing vessel of the United States equipped with purse seine gear must ensure the retention on board at all times while at sea within the Convention Area any bigeye tuna, yellowfin tuna, or skipjack tuna”).

In § 902.1(b) of title 15 of the Code of Federal Regulations, which includes a table listing control numbers issues by the Office of Management and Budget (OMB) for collections of information required under NOAA regulations, new entries have been added for the OMB control numbers approved for the information collections required under §§ 300.215, 300.218, and 300.225 of title 50 of the Code of Federal Regulations.

Delegation of Authority

Under NOAA Administrative Order 205-11, dated December 17, 1990, the under Secretary of Oceans and Atmosphere has delegated authority to sign material for publication in the Federal Register to the Assistant Administrator for Fisheries, NOAA.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this final rule is consistent with the WCPFC Implementation Act and other applicable laws.

Executive Order 12866

The final rule has been determined not to be significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

A FRFA was prepared. The FRFA incorporates the IRFA prepared for the proposed rule. The analysis in the IRFA is not repeated here in its entirety.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble of the proposed rule and in the SUMMARY and SUPPLEMENTARY INFORMATION sections of this final rule, above. The analysis follows:

There would be no disproportionate economic impacts between small and large entities operating vessels as a result of this final rule. Furthermore, there would be no disproportionate economic impacts based on vessel size, gear, or homeport.

Significant Issues Raised by Public Comments in Response to IRFA

NMFS received two comments related to the IRFA (see Comments 2 and 3 on the proposed rule, above). Regarding Comment 2, NMFS agrees with the commenter that U.S. fishing businesses could bear costs associated with transshipping to foreign-flagged carrier vessels that are not already active in the Convention Area, and that this should be factored into the estimated compliance costs. See NMFS' Response to Comment 2 on the proposed rule, above, for a description of those possible costs. NMFS has also revised the RIR to reflect those possible costs. Regarding Comment 3, NMFS acknowledges the additional information about the historical activity of U.S. albacore troll and pole-and-line vessels near the Eastern SMA, as well as the possibility that the future rate of entries into and exits out of the Eastern SMA by U.S. albacore troll vessels, and the associated costs, could be greater than the estimates provided in the IRFA. However, NMFS believes that the estimate in the IRFA of zero to two entries per year (and zero to two exits per year) is reasonable, based on readily available information regarding the fishing patterns of the fleet and recent VMS data, and an appropriate basis for the cost estimates. See NMFS' Response to Comment 3 on the proposed rule, above, for further details. NMFS has not made any changes to the rule as a result of these two comments.

Description of Small Entities to Which the Rule Will Apply

The final rule will apply to owners and operators of U.S. HMS fishing vessels used to: (1) transship HMS in the Convention Area or to transship outside the Convention Area HMS caught in the Convention Area; (2) enter or exit the Eastern SMA; or (3) purse seine for HMS in the Convention Area. The estimated number of affected entities is as follows, broken down by vessel type:

Based on the number of longline vessels permitted to fish under the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region or the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species as of January 2011, the estimated number of longline vessels to which the rule will apply is 170. Based on the number of purse seine vessels licensed under the South Pacific Tuna Treaty as of January 2011, the estimated number of purse seine vessels to which the rule will apply is 36. Based on the average annual number of albacore troll vessels that fished in the Convention Area during 2002-2009, the estimated number of troll vessels to which the rule will apply is 26. The total estimated number of vessels that would be subject to the rule is 232.

Based on the best available financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses in the longline and troll fleets are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$4.0 million. In the purse seine fleet, most or all of the businesses that operate these vessels are large entities as defined by the RFA. However, it is possible that one or a few of these fish harvesting businesses meet the criteria for small entities, so the purse seine fleet is included in the remainder of this analysis.

Reporting, Recordkeeping, and Other Compliance Requirements

The reporting, recordkeeping, and other compliance requirements under this rule are described earlier in the preamble. The classes of small entities subject to the requirements and the types of professional skills necessary to fulfill each of the requirements are described in the IRFA.

Steps Taken to Minimize the Significant Economic Impact on Small Entities

NMFS has attempted to identify alternatives that would accomplish the objectives of the Act and minimize any significant economic impact of the final rule on small entities. The alternative of taking no action at all was rejected because it would fail to accomplish the objectives of the WCPFC Implementation Act. As a Contracting Party to the Convention, the United States is required to implement the decisions of the WCPFC. For some of the elements where the CMMs provide discretion in implementation, NMFS has identified specific alternatives, as described below. For the other elements, NMFS has not identified alternatives. However, for each of the elements where alternatives have not been identified, NMFS has developed the element to be the least burdensome on small entities, while still being in accordance with the relevant WCPFC decision, as explained below.

With respect to element (1) of the rule, transshipment reporting requirements, one alternative would be to impose a uniform timeframe for submission of the report; to satisfy all requirements and the provisions of CMM 2009-06, it would have to be submitted to NMFS within 10 calendar days after completion of the transshipment. This alternative would be more burdensome for certain types of fishing vessels than the alternative adopted in this final rule, and was rejected for that reason. Submission of transshipment reports, as well as specific timeframes for submission of the reports for high seas and emergency transshipments, are specified in CMM 2009-06. Thus, NMFS has not identified any alternatives that would be less burdensome than the

alternative adopted in this final rule and would accomplish the objectives of the WCPFC Implementation Act.

With respect to element (2), prior notice for high seas transshipments and emergency transshipments, one alternative would be to give affected entities the option of either providing the notice of high seas transshipment to NMFS at least one business day plus 36 hours in advance of the transshipment (i.e., 60 hours before the transshipment), or, as under this final rule, providing the notice directly to the WCPFC at least 36 hours in advance of the transshipment, with a copy to NMFS. This flexibility could relieve the burden for some entities and/or situations; specifically, in cases where it is less burdensome to send the notification to NMFS than to the WCPFC. Under this alternative, if a vessel operator exercises the first option, NMFS would have to forward the notification to the WCPFC within one business day, so this alternative would bring some additional administrative costs to NMFS. This alternative would also have the disadvantage of being more complex and possibly more confusing to affected entities than the final rule (under which there would be a single timeframe and single recipient). For these reasons, and because NMFS believes that the benefits of the flexibility afforded to affected entities by this alternative would be minor, this alternative was rejected. CMM 2009-06 specifies submission of the notices, as well as specific timeframes for submission of the notices. Thus, the alternatives considered by NMFS were restricted by the parameters of the CMM.

With respect to element (3), observer coverage for transshipments at sea, NMFS has not identified any alternatives that would be less burdensome than the alternative adopted in this final rule and would accomplish the objectives of the WCPFC Implementation Act. CMM 2009-06 specifies requirements for at-sea observer coverage. For most transshipments, the provisions of the CMM specify that the observer must be on board the receiving vessel. However, for

transshipments to receiving vessels less than or equal to 33 meters in registered length and not involving purse seine caught fish or frozen longline caught fish, the observer may be on board the offloading or receiving vessel. The final rule allows maximum flexibility for at-sea observer coverage by allowing observers to be on board either the offloading or receiving vessel for transshipments to receiving vessels less than or equal to 33 meters in registered length and not involving purse seine caught fish or frozen longline caught fish. There are other conceivable alternatives, such as requiring that an observer be on board the receiving vessel or requiring that an observer be on board the offloading vessel. However, these two approaches would be more constraining, and thus, more burdensome on affected entities than the provisions in the final rule and would not provide any advantages with respect to the underlying purpose of the observer requirement. In developing this element to afford affected entities with the maximum flexibility, NMFS is ensuring that there is a greater chance of compliance, and thus, a greater chance that the objective of the CMM and the final rule will be satisfied.

With respect to element (4), restrictions on vessels with which transshipping and bunkering may be conducted, NMFS has not identified any alternatives that would be less burdensome than the alternative adopted in this final rule and would accomplish the objectives of the WCPFC Implementation Act. CMM 2009-06 and CMM 2009-01 include specific provisions for vessels with which transshipping and bunkering may be conducted and the final rule implements those provisions; the CMMs leave no room for consideration of any alternatives.

With respect to element (5), notice of entry or exit for Eastern SMA, NMFS has not identified any alternatives that would be less burdensome than the alternative adopted in this final rule and would accomplish the objectives of the WCPFC Implementation Act. CMM 2010-02 includes specific requirements for notice of entry or exit for the Eastern SMA and the final rule

implements those provisions; the CMM leaves no room for consideration of any alternatives that would reduce the cost of compliance.

With respect to element (6), the purse seine discard report, NMFS has not identified any alternatives that would be less burdensome than the alternative adopted in this final rule and would accomplish the objectives of the WCPFC Implementation Act. CMM 2009-02 includes specific requirements for the purse seine discard report, and the final rule implements those provisions; the CMM leaves no room for consideration of any alternatives that would reduce the cost of compliance.

With respect to element (7), net sharing restrictions and reporting, one alternative would be to allow U.S. vessels to net share to (but not from) foreign-flagged vessels, and a second would be to allow U.S. vessels to net share both to and from foreign vessels. Under both these alternatives, net sharing would be allowed only on the last set. Alternatives to allow net sharing on other than the last set would not be consistent with WCPFC decisions, so were not further considered. Both alternatives identified above would be less restrictive than the alternative adopted in this final rule and thus bring lower compliance costs. The first alternative would make it difficult to ensure consistent counting and reporting of catches – for example, the shared catch might be logged as catch by both the U.S. catcher vessel and the foreign vessel with which the catch is shared. Since the foreign vessel is not expected to report its catch and effort data to NMFS, this could result in inaccurate reporting of catch. The alternative was rejected for that reason. The second alternative would have the same shortcoming and would also be very difficult to enforce, as the United States would have limited ability to determine whether a foreign vessel complied with the last-set condition. The alternative was rejected for those reasons.

For each element, NMFS also considered the no-action alternative, or status quo situation. However, as stated above, the no-action alternative would not accomplish the objectives of the WCPFC Implementation Act and was rejected for that reason.

Small Entity Compliance Guides

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, one or more small entity compliance guides have been prepared. The guide(s) will be sent to permit and license holders in the affected fisheries. The guide(s) and this final rule will also be available at <http://www.fpir.noaa.gov/> and by request from NMFS PIRO (see ADDRESSES).

Paperwork Reduction Act

This final rule contains new collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648-0649. The public reporting burdens for each of the requirements are estimated as follows: transshipment reporting: 60 minutes per response, on average; prior notice for high seas transshipments and emergency transshipments: 15 minutes per response, on average; pre-trip notification for the purpose of deploying observers: 1 minute per response, on average; notice of entry or exit for Eastern SMA: 15 minutes per response, on average; purse seine discard report: 30 minutes per response, on average. These estimates include the time for reviewing instructions,

searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments on these or any other aspects of the proposed collection of information to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see ADDRESSES), and by e-mail to OIRA_Submission@omb.eop.gov or fax to 202-395-7285.

This final rule also contains a collection-of-information requirement subject to the PRA that was previously approved by OMB under control number 0648-0218, “South Pacific Tuna Act” (the net sharing reporting requirement). The public reporting burden for the Catch Report Form under that collection-of-information requirement is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. NMFS estimated that the net sharing reporting requirement would not increase the public reporting burden for the Catch Report Form. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Prior notice and opportunity for public comment are not required with respect to the revision to the table of OMB control numbers in 15 CFR 902.1(b), because this action is a rule of agency organization, procedure or practice under 5 U.S.C. 553(b)(A).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 300

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

Dated: November 27, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter III are amended as follows:

15 CFR Chapter IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,

DEPARTMENT OF COMMERCE

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE

PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 et seq.

2. In § 902.1, paragraph (b), the table is amended by adding in the left column under 50 CFR, in numerical order, entries for § § 300.215, 300.218, and 300.225, and, in the right column, in corresponding positions, the control number “-0649” as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

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(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
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50 CFR

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300.215	-0649
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300.218	-0649
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300.225	-0649
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50 CFR CHAPTER III--INTERNATIONAL FISHING AND RELATED ACTIVITIES

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. In § 300.211, definitions of “Cooperating Non-Member,” “Eastern High Seas Special Management Area,” “Net sharing,” “WCPFC Interim Register of non-Member Carrier and Bunker Vessels,” and “WCPFC Record of Fishing Vessels” are added, in alphabetical order, and the definition of “Transshipment” is revised, to read as follows:

§ 300.211 Definitions.

* * * * *

Cooperating Non-Member means a non-Member of the Commission that has been accorded Cooperating Non-Member status by the Commission at the Commission’s most recent annual meeting.

Eastern High Seas Special Management Area means the area of the high seas within the area bounded by the four lines connecting, in the most direct fashion, the coordinates specified as follows: 11° S. latitude and 161° W. longitude; 11° S. latitude and 154° W. longitude; 16° S. latitude and 154° W. longitude; and 16° S. latitude and 161° W. longitude.

* * * * *

Net sharing means the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one vessel to another fishing vessel. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel.

* * * * *

Transshipment means the unloading of fish from on board one fishing vessel and its direct transfer to, and loading on board, another fishing vessel, either at sea or in port. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel. Net sharing is not a transshipment.

* * * * *

WCPFC Interim Register of Non-Member Carrier and Bunker Vessels means, for the purposes of this subpart, the WCPFC Interim Register of non-Member Carrier and Bunker Vessels as established in the decisions of the WCPFC and maintained on the WCPFC's Web site at <http://www.wcpfc.int/>.

* * * * *

WCPFC Record of Fishing Vessels means, for the purposes of this subpart, the WCPFC Record of Fishing Vessels as established in the decisions of the WCPFC and maintained on the WCPFC's Web site at <http://www.wcpfc.int/>.

* * * * *

3. Section 300.215 is revised to read as follows:

§ 300.215 Observers.

(a) Applicability. This section applies to the following categories of fishing vessels:

(1) Any fishing vessel of the United States with a WCPFC Area Endorsement.

(2) Any fishing vessel of the United States for which a WCPFC Area Endorsement is required.

(3) Any fishing vessel of the United States used for commercial fishing that receives or offloads in the Convention Area a transshipment of HMS at sea.

(b) Notifications. The owner or operator of a vessel required to carry a WCPFC observer under paragraph (d) of this section during a given fishing trip must ensure the provision of notice to the Pacific Islands Regional Administrator at least 72 hours (exclusive of weekends and Federal holidays) before the vessel leaves port on the fishing trip, indicating the need for an observer. The notice must be provided to the office or telephone number designated by the

Pacific Islands Regional Administrator and must include the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and a telephone number at which the owner, operator, or a designated agent may be contacted during the business day (8 a.m. to 5 p.m. Hawaii Standard Time). If applicable, notice may be provided in conjunction with the notice required under § 665.803(a) of this title.

(c) Accommodating observers. (1) Fishing vessels specified in paragraphs (a)(1) and (a)(2) of this section must carry, when directed to do so by NMFS, a WCPFC observer on fishing trips during which the vessel at any time enters or is within the Convention Area. The operator and each member of the crew of the fishing vessel shall act in accordance with paragraphs (c)(3), (c)(4), and (c)(5) of this section with respect to any WCPFC observer.

(2) Fishing vessels specified in paragraph (a)(3) of this section must carry an observer when required to do so under paragraph (d) of this section. The operator and each member of the crew of the fishing vessel shall act in accordance with paragraphs (c)(3), (c)(4), and (c)(5) of this section, as applicable, with respect to any WCPFC observer.

(3) The operator and crew shall allow and assist WCPFC observers to:

(i) Embark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator;

(ii) Have access to and use of all facilities and equipment as necessary to conduct observer duties, including, but not limited to: Full access to the bridge, the fish on board, and areas which may be used to hold, process, weigh and store fish; full access to the vessel's records, including its logs and documentation, for the purpose of inspection and copying; access to, and use of, navigational equipment, charts and radios; and access to other information relating to fishing;

(iii) Remove samples;

(iv) Disembark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator; and

(v) Carry out all duties safely.

(4) The operator shall provide the WCPFC observer, while on board the vessel, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel, at no expense to the WCPFC observer.

(5) The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass or interfere with WCPFC observers in the performance of their duties, or attempt to do any of the same.

(d) Transshipment observer coverage -- (1) Receiving vessels. Any fishing vessel of the United States used for commercial fishing that receives in the Convention Area a transshipment of HMS at sea must have a WCPFC observer on board during such transshipment unless at least one of the following sets of conditions applies:

(i) The vessel is less than or equal to 33 meters in registered length, the transshipment does not include any fish caught by purse seine gear, the transshipment does not include any frozen fish caught by longline gear, and, during the transshipment, there is a WCPFC observer on board the vessel that offloads the transshipment;

(ii) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught in such waters; or

(iii) The transshipment is an emergency, as specified under § 300.216(b)(4).

(2) Offloading vessels. Any fishing vessel of the United States used for commercial fishing that offloads a transshipment of HMS at sea in the Convention Area must have a WCPFC observer on board, unless one or more of the following conditions apply:

- (i) The vessel that receives the transshipment has a WCPFC observer on board;
 - (ii) The vessel that receives the transshipment is greater than 33 meters in registered length;
 - (iii) The transshipment includes fish caught by purse seine gear;
 - (iv) The transshipment includes frozen fish caught by longline gear;
 - (v) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught in such waters; or
 - (vi) The transshipment is an emergency, as specified under § 300.216(b)(4).
- (e) Related observer requirements. Observers deployed by NMFS pursuant to regulations issued under other statutory authorities on vessels used for fishing for HMS in the Convention Area will be deemed by NMFS to have been deployed pursuant to this section.

4. Section 300.216 is revised to read as follows:

§ 300.216 Transshipping, bunkering and net sharing.

- (a) Transshipment monitoring. [Reserved]
- (b) Restrictions on transshipping and bunkering -- (1) Restrictions on transshipments involving purse seine fishing vessels. (i) Fish may not be transshipped from a fishing vessel of the United States equipped with purse seine gear at sea in the Convention Area, and a fishing vessel of the United States may not be used to receive a transshipment of fish from a fishing vessel equipped with purse seine gear at sea in the Convention Area.

(ii) Fish caught in the Convention Area may not be transhipped from a fishing vessel of the United States equipped with purse seine gear at sea, and a fishing vessel of the United States may not be used to receive a transshipment of fish caught in the Convention Area from a fishing vessel equipped with purse seine gear at sea.

(2) Restrictions on at-sea transshipments. If a transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters, this paragraph does not apply.

(i) The owner and operator of a fishing vessel of the United States used for commercial fishing that offloads or receives a transshipment of HMS at sea in the Convention Area must ensure that a WCPFC observer is on board at least one of the vessels involved in the transshipment for the duration of the transshipment.

(ii) A fishing vessel of the United States used for commercial fishing that receives transshipments of HMS at sea in the Convention Area shall not receive such transshipments from more than one vessel at a time unless there is a separate WCPFC observer available on either the offloading or receiving vessel to monitor each additional transshipment.

(3) General restrictions on transshipping and bunkering -- (i) Transshipment. Only fishing vessels that are authorized to be used for fishing in the EEZ may engage in transshipment in the EEZ. Any fishing vessel of the United States used for commercial fishing shall not be used to offload or receive a transshipment of HMS in the Convention Area unless one or more of the following is satisfied:

(A) The other vessel involved in the transshipment is flagged to a Member or Cooperating Non-Member of the Commission;

(B) The other vessel involved in the transshipment is on the WCPFC Record of Fishing Vessels;

(C) The other vessel involved in the transshipment is on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels; or

(D) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters.

(ii) Bunkering, supplying and provisioning. Only fishing vessels that are authorized to be used for fishing in the EEZ may engage in bunkering in the EEZ. A fishing vessel of the United States used for commercial fishing for HMS shall not be used to provide bunkering, to receive bunkering, or to exchange supplies or provisions with another vessel in the Convention Area unless one or more of the following is satisfied:

(A) The other vessel involved in the bunkering or exchange of supplies or provisions is flagged to a Member or a Cooperating Non-Member of the Commission;

(B) The other vessel involved in the bunkering or exchange of supplies or provisions is on the WCPFC Record of Fishing Vessels; or

(C) The other vessel involved in the bunkering or exchange of supplies or provisions is on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels.

(4) Emergency transshipments. The restrictions in paragraphs (b)(1), (b)(2), and (b)(3)(i) of this section shall not apply to a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage.

(c) Net sharing restrictions. (1) The owner and operator of a fishing vessel of the United States shall not conduct net sharing in the Convention Area unless all of the following conditions are met:

(i) The vessel transferring the fish is a fishing vessel of the United States equipped with purse seine gear;

(ii) The vessel transferring the fish has insufficient well space for the fish;

(iii) The vessel transferring the fish engages in no additional purse seine sets during the remainder of the fishing trip; and

(iv) The vessel accepting the fish is a fishing vessel of the United States equipped with purse seine gear.

(2) Only fishing vessels of the United States that are authorized to be used for fishing in the EEZ may engage in net sharing in the EEZ, subject to the provisions of paragraph (c)(1) of this section.

5. In § 300.218, paragraphs (b), (c), (d), (e) and (f) are added to read as follows:

§ 300.218 Reporting and recordkeeping requirements.

* * * * *

(b) Transshipment reports. The owner and operator of any fishing vessel of the United States used for commercial fishing that offloads or receives a transshipment of HMS in the Convention Area, or a transshipment anywhere of HMS caught in the Convention Area, must ensure that a transshipment report for the transshipment is completed, using a form that is available from the Pacific Islands Regional Administrator, and recording all the information specified on the form. The owner and operator of the vessel must ensure that the transshipment

report is completed and signed within 24 hours of the completion of the transshipment, and must ensure that the report is submitted as follows:

(1) For vessels licensed under § 300.32, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified at § 300.34(c)(2) for submitting the transshipment logsheet form to the Administrator as defined at § 300.31.

(2) For vessels registered for use under § 660.707 of this title, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified for the logbook form at § 660.708 of this title.

(3) For vessels subject to the requirements of § 665.14(c) and § 665.801(e) of this title, and not subject to the requirements of paragraphs (b)(1) or (b)(2) of this section, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified at § 665.14(c) of this title for submitting transshipment logbooks to the Pacific Islands Regional Administrator for landings of western Pacific pelagic management unit species.

(4) For all transshipments on the high seas and emergency transshipments that meet the conditions described in § 300.216(b)(4), including transshipments involving the categories of vessels specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section, the report is submitted by fax or email to the address specified by the Pacific Islands Regional Administrator no later than 10 calendar days after completion of the transshipment. The report may be submitted with or without signatures so long as the original transshipment report with signatures is submitted to the address specified by the Pacific Islands Regional Administrator no later than 15 calendar days

after the vessel first enters into port or 15 calendar days after completion of the transshipment for emergency transshipments in port.

(5) For all other transshipments at sea, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator no later than 72 hours after the vessel first enters into port.

(6) For all other transshipments in port, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator no later than 72 hours after completion of the transshipment.

(c) Exceptions to transshipment reporting requirements. Paragraph (b) of this section shall not apply to a transshipment that takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters.

(d) Transshipment notices -- (1) High seas transshipments. The owner and operator of a fishing vessel of the United States used for commercial fishing that offloads or receives a transshipment of HMS on the high seas in the Convention Area, or a transshipment of HMS caught in the Convention Area anywhere on the high seas, and not subject to the requirements of paragraph (d)(2) of this section, must ensure that a notice is submitted to the Commission by fax or email at least 36 hours prior to the start of such transshipment at the address specified by the Pacific Islands Regional Administrator, and that a copy of that notice is submitted to NMFS at the address specified by the Pacific Islands Regional Administrator at least 36 hours prior to the start of the transshipment. The notice must be reported in the format provided by the Pacific Islands Regional Administrator and must contain the following information:

(i) The name of the offloading vessel.

(ii) The vessel identification markings located on the hull or superstructure of the offloading vessel.

(iii) The name of the receiving vessel.

(iv) The vessel identification markings located on the hull or superstructure of the receiving vessel.

(v) The expected amount, in metric tons, of fish product to be transshipped, broken down by species and processed state.

(vi) The expected date or dates of the transshipment.

(vii) The expected location of the transshipment, including latitude and longitude to the nearest tenth of a degree.

(viii) An indication of which one of the following areas the expected transshipment location is situated: high seas inside the Convention Area; high seas outside the Convention Area; or an area under the jurisdiction of a particular nation, in which case the nation must be specified.

(ix) The expected amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: inside the Convention Area, on the high seas; outside the Convention Area, on the high seas; and within areas under the jurisdiction of particular nations, with each such nation and the associated amount specified. This information is not required if the reporting vessel is the receiving vessel.

(2) Emergency transshipments. The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS that offloads or receives a transshipment of HMS in the Convention Area, or a transshipment of HMS caught in the Convention Area anywhere, that is allowed under § 300.216(b)(4) but would otherwise be prohibited under the regulations in this

subpart, must ensure that a notice is submitted by fax or email to the Commission at the address specified by the Pacific Islands Regional Administrator, and a copy is submitted to NMFS at the address specified by the Pacific Islands Regional Administrator within twelve hours of the completion of the transshipment. The notice must be reported in the format provided by the Pacific Islands Regional Administrator and must contain the following information:

- (i) The name of the offloading vessel.
- (ii) The vessel identification markings located on the hull or superstructure of the offloading vessel.
- (iii) The name of the receiving vessel.
- (iv) The vessel identification markings located on the hull or superstructure of the receiving vessel.
- (v) The expected or actual amount, in metric tons, of fish product transshipped, broken down by species and processed state.
- (vi) The expected or actual date or dates of the transshipment.
- (vii) The expected or actual location of the transshipment, including latitude and longitude to the nearest tenth of a degree.
- (viii) An indication of which one of the following areas the expected or actual transshipment location is situated: high seas inside the Convention Area; high seas outside the Convention Area; or an area under the jurisdiction of a particular nation, in which case the nation must be specified.
- (ix) The amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: inside the Convention Area, on the high seas; outside the Convention Area, on the high seas; and within areas under the jurisdiction of particular nations, with each such

nation and the associated amount specified. This information is not required if the reporting vessel is the receiving vessel.

(x) The reason or reasons for the emergency transshipment (i.e., a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage).

(3) Location of high seas and emergency transshipments. A high seas or emergency transshipment in the Convention Area or of HMS caught in the Convention Area anywhere subject to the notification requirements of paragraph (d)(1) or (d)(2) must take place within 24 nautical miles of the location for the transshipment indicated in the notice submitted under paragraph (d)(1)(vii) or (d)(2)(vii) of this section.

(e) Purse seine discard reports. The owner and operator of any fishing vessel of the United States equipped with purse seine gear must ensure that a report of any at-sea discards of any bigeye tuna (Thunnus obesus), yellowfin tuna (Thunnus albacares), or skipjack tuna (Katsuwonus pelamis) caught in the Convention Area is completed, using a form that is available from the Pacific Islands Regional Administrator, and recording all the information specified on the form. The report must be submitted within 48 hours after any discard to the Commission by fax or email at the address specified by the Pacific Islands Regional Administrator. A copy of the report must be submitted to NMFS at the address specified by the Pacific Islands Regional Administrator by fax or email within 48 hours after any such discard. A hard copy of the report must be provided to the observer on board the vessel, if any.

(f) Net sharing reports -- (1) Transferring vessels. The owner and operator of a fishing vessel of the United States equipped with purse seine gear that transfers fish to another fishing

vessel equipped with purse seine gear under § 300.216(c) shall ensure that the amount, by species, of fish transferred, as well as the net sharing activity, is recorded on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator.

(2) Accepting vessels. The owner and operator of a fishing vessel of the United States equipped with purse seine gear that accepts fish from another purse seine fishing vessel under § 300.216(c) shall ensure that the net sharing activity is recorded on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator.

6. In § 300.222, paragraph (y) is revised and paragraphs (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm) (nn), (oo), (pp), and (qq) are added to read as follows:

§ 300.222 Prohibitions.

* * * * *

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

* * * * *

(ee) Fail to carry on board a WCPFC observer during a transshipment at sea, as required in § 300.215(d).

(ff) Offload, receive, or load fish caught in the Convention Area from a purse seine vessel at sea in contravention of § 300.216.

(gg) Fail to ensure that a WCPFC observer is on board at least one of the vessels involved in the transshipment for the duration of the transshipment in contravention of § 300.216(b)(2)(i), except as specified at § 300.216(b)(4).

(hh) Receive transshipments from more than one fishing vessel at a time in contravention of § 300.216(b)(2)(ii), except as specified at § 300.216(b)(4).

(ii) Transship to or from another vessel, in contravention of § 300.216(b)(3)(i), except as specified at § 300.216(b)(4).

(jj) Provide bunkering, receive bunkering, or exchange supplies or provisions with another vessel, in contravention of § 300.216(b)(3)(ii).

(kk) Engage in net sharing except as specified under § 300.216(c).

(ll) Fail to submit, or ensure submission of, a transshipment report as required in § 300.218(b), except as specified under § 300.218(c).

(mm) Fail to submit, or ensure submission of, a transshipment notice as required in § 300.218(d).

(nn) Transship more than 24 nautical miles from the location indicated in the transshipment notice, in contravention of § 300.218(d)(3).

(oo) Fail to submit, or ensure submission of, a discard report as required in § 300.218(e).

(pp) Fail to submit, or ensure submission of, a net sharing report as required in § 300.218(f).

(qq) Fail to submit, or ensure submission of, an entry or exit notice for the Eastern High Seas Special Management Area as required in § 300.225.

7. In § 300.223, paragraph (d)(3) introductory text is revised to read as follows:

§ 300.223. Purse seine fishing restrictions.

* * * * *

(d) * * *

(3) An owner and operator of a fishing vessel of the United States equipped with purse seine gear must ensure the retention on board at all times while 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:

* * * * *

8. Section 300.225 is added to subpart O to read as follows:

§ 300.225 Eastern High Seas Special Management Area.

(a) Entry notices. The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must ensure the submission of a notice to the Commission at the address specified by the Pacific Islands Regional Administrator by fax or email at least six hours prior to entering the Eastern High Seas Special Management Area. The owner or operator must ensure the submission of a copy of the notice to NMFS at the address specified by the Pacific Islands Regional Administrator by fax or email at least six hours prior to entering the Eastern High Seas Special Management Area. The notice must be submitted in the format specified by the Pacific Island Regional Administrator and must include the following information:

- (1) The vessel identification markings located on the hull or superstructure of the vessel;
- (2) Date and time (in UTC) of anticipated point of entry;
- (3) Latitude and longitude, to nearest tenth of a degree, of anticipated point of entry;
- (4) Amount of fish product on board at the time of the notice, in kilograms, in total and for each of the following species or species groups: yellowfin tuna, bigeye tuna, albacore, skipjack tuna, swordfish, shark, other; and

(5) An indication of whether the vessel intends to engage in any transshipments prior to exiting the Eastern High Seas Special Management Area.

(b) Exit notices. The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must ensure the submission of a notice to the Commission at the address specified by the Pacific Islands Regional Administrator by fax or email no later than six hours prior to exiting the Eastern High Seas Special Management Area. The owner or operator must ensure the submission of a copy of the notice to NMFS at the address specified by the Pacific Islands Regional Administrator by fax or email no later than six hours prior to exiting the Eastern High Seas Special Management Area. The notices must be submitted in the format specified by the Pacific Island Regional Administrator and must include the following information:

- (1) The vessel identification markings located on the hull or superstructure of the vessel.
- (2) Date and time (in UTC) of anticipated point of exit.
- (3) Latitude and longitude, to nearest tenth of a degree, of anticipated point of exit.
- (4) Amount of fish product on board at the time of the notice, in kilograms, in total and for each of the following species or species groups: yellowfin tuna, bigeye tuna, albacore, skipjack tuna, swordfish, shark, other; and

(5) An indication of whether the vessel has engaged in or will engage in any transshipments prior to exiting the Eastern High Seas Special Management Area.

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