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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130104011-3456-02]

RIN 0648-BC87

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2013-2014

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to implement limits on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone (EEZ) and on the high seas, restrictions on the use of fish aggregating devices (FADs), and requirements for U.S. purse seine vessels to carry observers. This action is necessary for the United States to implement provisions of a conservation and management measure adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) to satisfy the international obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

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

ADDRESSES: Copies of supporting documents 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 www.regulations.gov (search for Docket ID NOAA-NMFS-2013-0043). Those documents, and the small entity compliance guide 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.

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

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2013, NMFS published a proposed rule in the Federal Register (78 FR 14755) to revise regulations at 50 CFR part 300, subpart O, to implement a decision of the WCPFC. The proposed rule was open to public comment through April 8, 2013. On March 25, 2013, NMFS published a correction to the proposed rule (78 FR 17919) regarding the address in the Federal e-Rulemaking Portal through which comments on the proposed rule could be submitted electronically.

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 for U.S. fishing vessels the purse seine-related provisions of WCPFC Conservation and Management Measure (CMM) 2012-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.” The preamble to the proposed rule includes detailed background information, including on the Convention and the WCPFC, the provisions of CMM 2012-01 being implemented in this rule, and the bases for the proposed regulations, which is not repeated here.

New Requirements

(1) Fishing Effort Limits

This final rule establishes a limit of 2,588 fishing days, for each of calendar years 2013 and 2014, that may be used by U.S. purse seine vessels in an area called the Effort Limit Area for Purse Seine, or ELAPS. The ELAPS includes all areas of the high seas and U.S. EEZ within the Convention Area between the latitudes of 20° North and 20° South (but not the U.S. territorial sea). Once NMFS determines during either of 2013 or 2014 that, based on available information, the limit is expected to be reached by a specific future date, NMFS will issue a notice in the Federal Register announcing the closure of the U.S. purse seine fishery in the ELAPS starting on that specific future date. Upon any closure, it will be prohibited to use a U.S. purse seine vessel to fish in the ELAPS through the end of the calendar year. NMFS will publish the notice at least seven calendar days before the effective date of the closure to provide fishermen advance notice of the closure.

(2) FAD Restrictions

This final rule establishes FAD prohibition periods from July 1 through October 31 in 2013 and in 2014. During these periods it is prohibited for U.S. fishing vessels to set purse seines on or near FADs or to engage in specific other FAD-related activities in the Convention Area between the latitudes of 20° North and 20° South.

A FAD is defined to mean any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any object used for that purpose that is situated on board a vessel or otherwise out of the water. The definition of FAD does not include a vessel.

The specific activities that are prohibited in the applicable area during the FAD prohibition periods are:

- (1) Setting a purse seine around a FAD or within one nautical mile of a FAD.
- (2) Setting a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel, such as by setting the purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours, or setting the purse seine in an area in which a FAD has been inspected or handled within the previous eight hours, or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel.
- (3) Deploying a FAD into the water.
- (4) Repairing, cleaning, maintaining, or otherwise servicing a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that: (i) a FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk

to human safety, and (ii) a FAD may be removed from the water and if removed may be cleaned, provided that it is not returned to the water.

(5) Doing any of the following from a purse seine vessel or any associated skiffs, other watercraft or equipment, except in emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage: (i) submerging lights under water; (ii) suspending or hanging lights over the side of the purse seine vessel, skiff, watercraft or equipment, or (iii) directing or using lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew.

(3) Observer Requirements

This final rule requires that U.S. purse seine vessels carry WCPFC observers on all fishing trips in the Convention Area in 2013 and 2014, except fishing trips that occur entirely outside the area bounded by 20° North and 20° South latitude or entirely within waters of a single foreign nation. A WCPFC observer is any observer authorized by the WCPFC to undertake duties as part of the WCPFC's Regional Observer Programme. Currently, observers deployed as part of the Pacific Islands Forum Fisheries Agency's observer program and observers deployed as part of the NMFS observer program qualify as WCPFC observers.

Although this final rule does not require U.S. purse seine vessels to carry observers when fishing exclusively in water under the jurisdiction of a single foreign nation, in that situation, the foreign nation might have its own observer requirements that apply to the U.S. vessel. Furthermore, U.S. regulations at 50 CFR 300.214 require that if a U.S. fishing vessel with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required is used for

fishing for highly migratory species in the Convention Area in areas under the jurisdiction of a WCPFC member other than the United States, the owner and operator of the vessel must ensure that the vessel is operated in compliance with the applicable laws of that member, including any laws related to carrying observers.

(4) Other

In addition to establishing the three sets of requirements described above, this final rule revises paragraph (c) of 50 CFR 300.223, which relates to areas closed to purse seine fishing. The requirements in that paragraph expired on December 31, 2012. This final rule removes the contents of that paragraph and reserves the paragraph. Because the requirements in that paragraph have expired, this revision is merely of a housekeeping nature.

Comments and Responses

NMFS received four sets of comments on the proposed rule and supporting documents. The comments are summarized below, followed by responses from NMFS.

Comment 1: The proposed rule is extremely necessary to maintain the health of the Pacific fisheries, particularly tuna fisheries. Tuna is a prize catch and is being overfished at an alarming rate. The measures proposed by the Commission will be vital in maintaining the health of the Pacific Ocean ecosystems.

The FAD and purse seine measures are articulated well; they will not only provide protection for the tuna populations, but for the marine ecosystems of the WCPO as a whole. Treating vessels as FADs will help control rates of overfishing.

The rule would be more effective if it applied to the territorial seas, as the previous WCPFC measures did, so that the measures would apply as widely as possible.

The fishing limits and FAD restrictions passed by the WCPFC implemented in this regulation are measures that promote sustainability and protection of fish populations. However, because the regulations apply only to a specific area of the Pacific Ocean, it is necessary to ensure coordination with fisheries in the remaining areas of the Pacific.

The agency should continue to monitor the success of the limits and restrictions, as the FAD restrictions apply only from July through October; depending on when vessels undertake their voyages, these restrictions may not provide much protection to schools of tuna.

The limited geographical application of the observer requirements may encourage fishermen to take trips outside the applicable areas so as not to have to comply with the requirements.

To the extent possible, NOAA should survey and observe the tuna populations in the WCPO to ensure maximum sustainable yields, especially since the proposed rule notes that it is unlikely the fishing limits will be reached.

The proposed rule's note of the possibility of increased tuna prices should the fishery have to close from reaching the effort limit is premature and misplaced. Overfishing creates higher prices because of permanent scarcity, as indicated by the record amounts that have been paid for tuna. NOAA's primary concern should be the protection and conservation of the fisheries. Ensuring the United States' full compliance with the Commission's regulations strengthens and legitimizes global efforts to protect marine ecosystems.

Response: With respect to the necessity for, and importance of, the proposed rule, NMFS acknowledges the comments.

NMFS implemented previous WCPFC measures so that they applied in the territorial seas of the United States and of other nations. However, the purse seine-related provisions of CMM

2012-01 are specifically limited to EEZs and the high seas. Therefore, in order to be consistent with CMM 2012-01, this rule does not apply in the territorial seas of the United States or of other nations.

With respect to the need to coordinate with fisheries in areas of the Pacific other than the WCPO, the objective of the rule is the domestic implementation of a decision of the WCPFC, which applies only in the WCPO. Management of tuna stocks in other areas of the Pacific is under the purview of other regional fisheries management organizations (RFMOs), including the Inter-American Tropical Tuna Commission and the Commission for the Conservation of Southern Bluefin Tuna. Coordination with other fisheries, which, for example, could occur among those RFMOs and their members, is outside the scope of this rule.

On monitoring the success of the limits and restrictions, NMFS intends to undertake appropriate enforcement and other activities to monitor and help ensure compliance with the regulations. Monitoring success with respect to the objectives of CMM 2012-01 and the Convention is more appropriately undertaken on the international level, such as by the WCPFC.

On purse seine vessels avoiding the observer requirements by fishing outside the applicable areas, NMFS acknowledges the possibility, but notes that this behavior does not seem to have occurred during the last few years when similar observer requirements were in place.

On surveying and observing tuna populations to ensure maximum sustainable yield, assessments of the three tuna stocks are typically undertaken by the WCPFC and its science providers. The WCPFC then uses the assessment results in formulating management measures to achieve specific objectives, which might or might not be to achieve maximum sustainable yield. NOAA personnel contribute to these efforts of the WCPFC and its science providers.

With respect to the possibility of a fishery closure having effects on tuna prices, NMFS understands the comment to mean that the focus of the rulemaking should be on protecting and conserving fisheries and ensuring full compliance by the United States with the WCPFC's decisions. NMFS acknowledges the comment, but believes that analysis and consideration of the proposed rule's effects on fish prices, among other economic effects, is necessary. For example, analysis of price effects might be important in the context of analyzing the economic effects of the proposed rule on small entities, as required under the RFA, and on the nation as a whole, as required under Executive Order 12866.

Comment 2: The proposed rule needs to be reevaluated because it has inconsistencies and overlaps with other regulations. It is a lackluster and second-tiered approach to conservation; the United States government and industry can do better.

First, combining the high seas and U.S. EEZ into one area, the ELAPS, for the purpose of the fishing effort limits mixes apples and oranges – any U.S. flagged vessel can fish on the high seas, but only vessels originally constructed in the United States can fish in the U.S. EEZ. The U.S. EEZ is already limited by requirements at 46 U.S.C. 12113, which limit fishing effort in the U.S. EEZ, and is therefore a contradiction to the Duplicating, Overlapping, and Conflicting Federal Regulations section of the proposed rule in the IRFA. The United States should be leading the charge of true, enforceable and transparent regulations for the good of the fishery instead of constraining the U.S. fleet with regulations that are disregarded by the other distant water fleets operating in the area. This will drive the U.S. boats out and give the United States a limited say in conservation. Instead of endorsing a second-rate plan of limiting days and methods with quotas (or days), the U.S. government should be limiting the number of vessels and pushing for a full closure.

Second, with a full closure, which has been done with success in the EPO, the entire fishery, including all species, is given a chance to recuperate in a transparent and enforceable way instead of having several different regulations for each species. The United States should not be jumping on the FAD closure bandwagon, which is unenforceable, and definitely not transparent, as other fleets fish year-round on FADs regardless of the FAD closure while the U.S. fleet follows the FAD closure, which is at the wrong time of year and should be at the end and beginning of the years.

Response: NMFS understands that some of these comments relate not to the proposed rule, per se, but rather to the positions and role of the United States in the WCPFC. The response provided here is limited to the comments that relate directly to the proposed rule.

With respect to combining the effort limits for the high seas and U.S. EEZ, as described in the IRFA, the EA, and the RIR prepared for the rule, NMFS considered an alternative in which the two areas would not be combined for the purpose of the fishing effort limits. As explained in the IRFA, NMFS does not prefer that alternative in part because the separation of the two areas would provide less operational flexibility for affected purse seine vessels. NMFS recognizes that only vessels with fishery endorsements would benefit directly from that operational flexibility, since only such vessels are permitted to fish in the U.S. EEZ. NMFS acknowledges that the fishing effort limits in this rule are similar to the laws and regulations that govern fishery endorsements (including regulations at 46 CFR 67.21) in that both govern the use of U.S. vessels in the U.S. EEZ for fishing. NMFS agrees that the fishery endorsement regulations at 46 CFR 67.21 can be construed to overlap with the fishing effort limits established in this rule. However, the two regulations do not conflict with or duplicate each other, and NMFS does not believe that the possible overlap in the regulations is in itself a reason to

reevaluate the proposed combination of the two areas for the purpose of the fishing effort limit. Nonetheless, NMFS has further analyzed the proposal to combine the two areas for the purpose of the fishing effort limits (see additional discussion in the FRFA, below), but continues to believe that limits applicable in a single area will give the U.S. purse seine fleet as a whole greater opportunity to take full advantage of the available fishing days. Thus, NMFS has not made any change from the proposed rule.

With respect to the possibility of limiting vessel numbers, such a requirement would be outside the scope of this rulemaking, which is to implement the purse seine-related provisions of CMM 2012-01.

NMFS understands the comment regarding a full closure to mean the establishment of a seasonal closure on all purse seine fishing instead of the proposed FAD restrictions during certain periods of each year. NMFS acknowledges the commenter's views on the advantages of a seasonal closure on all purse seine fishing. However, CMM 2012-01 does not prescribe seasonal closures on all purse seine fishing; rather, it includes specific restrictions on the use of FADs. Consequently, in this rule NMFS is implementing the FAD restrictions called for in CMM 2012-01 to meet the United States' international obligations as a Member of the WCPFC.

Regarding the time of year during which the FAD restrictions will apply, the July-October period is mandated under CMM 2012-01, so establishing FAD prohibitions periods at other times of the year instead of July-October would fail to satisfy U.S. obligations under the Convention.

Comment 3: One commenter supports the no-action alternative, on the basis that there are many items that are still being discussed and are a work in progress. Although the elements of

the proposed rule seem simple, they have a lot of details, which, if not written and applied correctly, can have adverse effects.

The U.S. vessels have been following diligently the substance of WCPFC ideals without the regulations. The United States was one of the few countries that complied with the high seas pocket and FAD closures when CMM 2008-01 was put into effect.

One should be very careful about limiting the number of fishing days, internationally or otherwise, so as not to put the U.S. vessels at a disadvantage.

Although observers are necessary, the obligations of vessel managers and the rights of observers must be defined so that vessels are not jeopardized by claims from untrained or inexperienced observers.

Instead of more regulations for U.S. vessels, what is needed at this time is more enforcement for foreign vessels that conduct illegal activities.

Response: NMFS notes that certain aspects of this comment might pertain to the positions of the United States in the WCPFC, which is outside the scope of this rule. The response provided here is limited to the aspects of the comment that relate directly to the proposed rule.

Although CMM 2012-01 can be considered a work-in-progress in that it calls for the WCPFC to develop a multi-year management for 2014-2017, it also includes specific provisions for 2013 that WCPFC members, including the United States, became obligated to implement upon the effective date of the CMM, in February 2013. Consequently, the no-action alternative would not satisfy the obligations of the United States under the Convention, and NMFS has rejected it for that reason.

NMFS recognizes the possibility of adverse effects resulting from the rule. NMFS assessed the likely effects of the proposed rule – both adverse and positive –in the EA, IRFA, and RIR prepared for the rule. NMFS considered the results of those assessments, along with comments received on those assessments and on the proposed rule, in preparing this final rule.

NMFS recognizes that if the United States imposes WCPFC-mandated requirements on its vessels, such as limits on fishing effort, but other members of the WCPFC do not do the same for their vessels, U.S. fishing vessels can be put at a disadvantage relative to the fishing vessels of other members. However, in order to satisfy the obligations of the United States as a member of the WCPFC, NMFS must implement the WCPFC-mandated fishing effort limits for U.S. purse seine vessels. NMFS also notes that the United States, as a member of the WCPFC, is contributing to the development of the WCPFC’s compliance monitoring scheme, with the aim of improving compliance with WCPFC decisions by all its members.

In response to the comment regarding observers, NMFS notes that only WCPFC observers, meaning observers authorized by the WCPFC to undertake duties as part of the WCPFC’s Regional Observer Programme, can be used to satisfy the observer requirements of this rule. NMFS also notes that regulations at 50 CFR 300.215 specify the obligations of vessel operators and crew members with respect to accommodating and protecting the safety and interests of WCPFC observers.

The comment regarding enforcement of foreign vessels is acknowledged, but it is outside the scope of this rule, which applies only to U.S. vessels.

Comment 4: The regulations governing the use of FADs in 2009 (final rule published August 4, 2009; 74 FR 38544; hereafter, “2009 rule”) resulted in a number of alleged violations, in particular with respect to whether the purse seine vessel itself and its workboats could be

considered FADs. Unfortunately for those who had to try to figure out how to comply with the regulations, the WCPFC used two different definitions of what constituted a FAD in CMM 2008-01 and then amended that measure and the definition of FAD in CMM 2009-01, which also addressed, for the first time, the use of lights that might be used either to try to aggregate fish or to move aggregated fish. The 2009 rule did not address the use of lights.

Once again, the agency is not being very precise with regard to a question raised by the vessel operators during the 2009 rulemaking: that is, may the vessel catch fish that have aggregated under the vessel overnight? Although the proposed rule claims that the use of lights to aggregate or move fish was already prohibited under the 2009 rule, that statement is clearly misleading. If that statement were true, the agency would be prohibiting the use of any light that might shine, directly or indirectly, into the water overnight. Instead, the agency is being more precise about the use of certain kinds of lights, not just all lights, during these fish-under-boat sets.

It appears that the agency is trying to rectify the uncertainty caused by the 2009 FAD regulations in at least two ways, changing the definition of a FAD to exclude vessels and specifying what kind of lights may be used and how they are used. These clarifications will be helpful but not unless the agency makes an effort to educate the international observers who serve on these vessels, because NOAA's regulations differ from the applicable WCPFC CMMs. It also removes the absurdity in the 2009 rule whereby a vessel purposefully used to aggregate fish became a FAD under the regulations and could then no longer be serviced or maintained.

Finally, it would be helpful if the agency stated that one of the purposes of these changes in the 2013 FAD regulations is to make clear that U.S. flag vessels may harvest fish found under the purse seine vessel in the morning so long as the use of lights is circumscribed as set forth in

the regulations. The agency should be placing its priority on obtaining compliance through clear directives and not on obtaining penalties from vague rules.

Response: With respect to the comment that the WCPFC used two different definitions for FAD and then amended the definition of FAD, NMFS notes that the United States is obligated to implement WCPFC decisions through domestic regulations, and U.S. vessels are obligated to comply with those U.S. regulations, not WCPFC decisions. U.S. regulations to implement the original FAD restrictions adopted by the WCPFC were first issued in the 2009 rule, and NMFS extended them in 2011 (interim rule published December 30, 2011; 76 FR 82180). Those regulations included a single definition for a FAD, and that definition has not been modified until now, with the issuance of this final rule.

In response to the question as to whether vessels may catch fish that have aggregated under the vessel overnight, this final rule makes clear (as did the proposed rule): the rule explicitly prohibits setting a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel. In other words, a vessel may not set on fish that have aggregated under that vessel or any other vessel overnight, regardless of whether any effort was made to aggregate those fish. This is a change relative to the 2009 rule, which allowed vessels to set on fish that naturally aggregated under a vessel overnight, so long as the vessel was not used for the purpose of aggregating fish. In addition to this new prohibition, the proposed rule would – and this final rule does – amplify the prohibitions established in the 2009 rule by explicitly prohibiting the use of lights in specific manners that are known to be used to aggregate fish.

NMFS notes the comment regarding the need to educate the international observers who serve on these vessels. These observers have been authorized by the WCPFC to undertake vessel

observer duties as part of the WCPFC's Regional Observer Programme, and as such, have been trained to collect specific types of information in accordance with the requirements and standards of WCPFC Regional Observer Programme. U.S. enforcement agencies make use of that information, where relevant and as appropriate, to enforce U.S. laws and regulations. NMFS further notes that observers do not make any final determinations as to whether or not violations occurred on board a vessel, and all decisions regarding charging of violations is the responsibility of the NOAA Office of General Counsel.

In response to the final portion of this comment, NMFS reiterates that under this final rule, U.S. vessels may not set a purse seine to capture fish that have aggregated under the purse seine vessel in the morning even if the use of lights is circumscribed as set forth in the final rule. This is a change from the regulations established in the 2009 rule.

Changes from the Proposed Rule

In the proposed rule and this final rule, existing paragraph (b) in 50 CFR 300.223, "Use of fish aggregating devices," is expanded to prohibit setting a purse seine in a manner intended to capture fish that have aggregated in association with a vessel and amplified to explicitly prohibit the use of lights in specified manners. However, NMFS inadvertently did not include in the proposed rule corresponding changes to paragraph (w) in 50 CFR 300.222, "Prohibitions." Thus, a change has been made in this final rule to revise 50 CFR 300.222(w) so that it corresponds to the activities prohibited under 50 CFR 300.223(b).

In the proposed rule, the proposed revisions to the existing regulations for the observer requirements, at 50 CFR 300.223(e), were not properly numbered in sequence and some of the cross references among paragraphs were incorrect. The numbering of the relevant paragraphs and the numbering of the paragraphs referred to within those paragraphs, as well as the

instructions for revising the regulations, have been corrected in this final rule. Specifically, what was the introductory text of paragraph (e) in the proposed regulations has been redesignated as paragraph (e)(1). What were paragraphs (e)(1) and (e)(2) in the proposed regulations have been redesignated as (e)(1)(i) and (e)(1)(ii), respectively. Existing paragraphs (e)(3) and (e)(4), which relate to requirements to carry and accommodate WCPFC observers under 50 CFR 300.215 and other applicable regulations and which the proposed rule would not have revised, have been redesignated as (e)(2) and (e)(3), respectively, and revised so that they refer to paragraph (e)(1) of 50 CFR 300.223 and its two subparagraphs.

No other changes from the proposed rule have been made.

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

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

Regulatory Flexibility Act (RFA)

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 purse seine 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 the IRFA

NMFS received three comments related to the IRFA. See Comments 1, 2, and 3 on the proposed rule, and NMFS' responses, above.

Description of Small Entities to Which the Rule Will Apply

The final rule will apply to owners and operators of U.S. purse seine vessels used for fishing in the Convention Area. The number of affected vessels is the number licensed under the South Pacific Tuna Treaty (SPTT). The current number of licensed vessels is 40, which is the maximum number of licenses available under the SPTT (excluding the five joint-venture licenses available under the SPTT, none of which have ever been applied for or issued). Based on limited financial information available on the purse seine fleet, including the fleet's total landings in 2010 and average cannery prices for tuna species in that year, most or all of the businesses that operate vessels in the fleet 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 (i.e., 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); therefore, the purse seine fleet is included in this analysis.

Recordkeeping, Reporting, and Other Compliance Requirements

The final rule will not establish any new reporting or recordkeeping requirements within the meaning of the Paperwork Reduction Act. 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 Impacts on Small Entities

NMFS identified and considered several alternatives to the proposed rule, including the no-action alternative. The action alternatives are limited to the ways in which the fishing effort limits and the FAD restrictions would be implemented; no alternatives other than the no-action alternative were identified for the proposed observer requirements.

(1) Fishing Effort Limits: As discussed in the IRFA, NMFS considered in detail two alternatives to the proposed fleet-wide limit of 2,588 fishing days per year in the ELAPS. The first alternative would establish separate fleet-wide annual fishing effort limits in the U.S. EEZ (27 fishing days per year) and the high seas (433 fishing days per year) in the Convention Area. NMFS does not prefer this alternative because the limits would be much more constraining than the proposed limits, and their separation into two areas would provide less operational flexibility for affected purse seine vessels (specifically, as noted in NMFS' response to Comment 2 on the proposed rule, above, for those vessels with fishery endorsements). A variation of this alternative, not discussed in the IRFA, would be to establish separate limits in the two areas, but to formulate the number of available fishing days in each area so that the sum of the two limits is 2,588 fishing days per year. This variation could be advantageous for vessels with fishery endorsements (depending on the spatial distribution of fishing effort in a given year), but that advantage would be offset by the reduced operational flexibility for those vessels. NMFS does not see a significant advantage of this variation for affected entities, and rejects it in favor of the proposed fishing effort limits because the latter would afford greater operational flexibility for affected vessels, at least for vessels with fishery endorsements.

The second alternative would be less restrictive than the proposed rule's limits. As described in the IRFA, it would establish a limit of 3,943 fishing days per year in the ELAPS.

This alternative would be less constraining and thus less costly to affected entities than the proposed rule's limit, but it is rejected because it would depart from the effort limits established for 2009-2012. A limit of 2,588 fishing days per year in the ELAPS is consistent with the precedent set by the 2009 rule, and affected entities have already been exposed to the impacts of these limits for the past four years. The alternative of 3,943 fishing days per year would also be less conservative in that it would have the potential for greater adverse effects on fish stocks and other living marine resources.

In the RFA analysis for the 2009 rule, NMFS considered an alternative that would allocate the fishing effort limits among individual purse seine vessels in some manner. Given the complexity of setting up an individual allocation scheme, which would require considering which entities are to receive allocations, the criteria for making allocations, and whether and how the allocations would be transferable, as well as a mechanism to reliably monitor the fishing effort of the individual entities, NMFS does not believe it feasible to develop an individual allocation scheme for this rule. As a result, NMFS has not considered the option in depth, and rejects it. NMFS notes, however, that as found in the RFA analysis for the 2009 rule, this alternative would likely alleviate any adverse impacts of the race-to-fish that might occur as a result of establishing the competitive fishing effort limits as in the proposed rule. Those impacts, however, would be expected to be minor.

The alternative of taking no action at all is rejected because it would fail to accomplish the objective of the WCPFC Implementation Act or satisfy the international obligations of the United States as a Contracting Party to the Convention.

(2) FAD Restrictions: NMFS considered one alternative to the proposed FAD restrictions. This alternative would be the same as the proposed rule's restrictions except that it

would not be prohibited to set on fish that have aggregated in association with a vessel (provided that the vessel is not used in a manner to aggregate fish). This would be less restrictive and thus presumably less costly to affected purse seine fishing businesses than the proposed rule's requirements. Historically, the number of these sets has been relatively small, averaging about four per year for the entire fleet from 1997 through 2010, according to data recorded by vessel operators in logbooks (examination by NMFS of observer data from selected years indicates a somewhat higher number than the number reported by vessel operators, so vessel logbook data might underestimate the actual number, but the number is still small in comparison to FAD sets). Therefore, the degree of relief in compliance costs of allowing these sets for four months each year would be expected to be relatively small. NMFS believes that this alternative would not serve CMM 2012-01's objective of reducing the tuna stocks' fishing mortality rates through seasonal prohibitions on the use of FADs as well as would the proposed rule's FAD restrictions. For that reason, this alternative is rejected.

The alternative of taking no action at all is rejected because it would fail to accomplish the objective of the WCPFC Implementation Act or satisfy the international obligations of the United States as a Contracting Party to the Convention.

Small Entity Compliance Guide

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, a small entity compliance guide has been prepared. The guide

will be sent to permit and license holders in the affected fisheries. The guide and this final rule will also be available at www.fpir.noaa.gov and by request from NMFS PIRO (see ADDRESSES).

List of Subjects in 50 CFR Part 300

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

Dated: May 16, 2013

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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, the definitions of “Effort Limit Area for Purse Seine or ELAPS”, and “Fish aggregating device”, or “FAD”, are revised to read as follows:

§ 300.211 Definitions.

* * * * *

Effort Limit Area for Purse Seine, or ELAPS, means, within the area between 20° N. latitude and 20° S. latitude, areas within the Convention Area that either are high seas or within the EEZ.

Fish aggregating device, or FAD, means any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any object used for that purpose that is situated on board a vessel or otherwise out of the water. The definition of FAD does not include a vessel.

* * * * *

3. In § 300.222, paragraph (w) is revised to read as follows:

§ 300.222 Prohibitions.

* * * * *

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

* * * * *

4. In § 300.223, the introductory text, paragraph (a) introductory text and paragraph (a)(1), and paragraph (b) are revised, paragraph (c) is removed and reserved, and paragraph (e) is revised to read as follows:

§ 300.223 Purse seine fishing restrictions.

None of the requirements of this section apply in the territorial seas or archipelagic waters of the United States or any other nation, as defined by the domestic laws and regulations of that nation and recognized by the United States. All dates used in this section are in Universal Coordinated Time, also known as UTC; for example: the year 2013 starts at 00:00 on January 1,

2013 UTC and ends at 24:00 on December 31, 2013 UTC; and July 1, 2013, begins at 00:00 UTC and ends at 24:00 UTC.

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

(1) For each of the calendar years 2013 and 2014 there is a limit of 2,588 fishing days.

* * * * *

(b) Use of fish aggregating devices. From July 1 through October 31, 2013, and from July 1 through October 31, 2014, owners, operators, and crew of fishing vessels of the United States shall not do any of the activities described below in the Convention Area in the area between 20° N. latitude and 20° S. latitude:

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

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

(3) Deploy a FAD into the water.

(4) Repair, clean, maintain, or otherwise service a FAD, including any electronic equipment used in association with a FAD, in the water or on a vessel while at sea, except that:

(i) A FAD may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety; and

(ii) A FAD may be removed from the water and if removed may be cleaned, provided that it is not returned to the water.

(5) From a purse seine vessel or any associated skiffs, other watercraft or equipment, do any of the following, except in emergencies as needed to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage:

(i) Submerge lights under water;

(ii) Suspend or hang lights over the side of the purse seine vessel, skiff, watercraft or equipment, or;

(iii) Direct or use lights in a manner other than as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment, to comply with navigational requirements, and to ensure the health and safety of the crew.

* * * * *

(e) Observer coverage. (1) Until 24:00 UTC on December 31, 2014, a fishing vessel of the United States may not be used to fish with purse seine gear in the Convention Area without a WCPFC observer on board. This requirement does not apply to fishing trips that meet either of the following conditions:

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

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

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

(3) Meeting either of the conditions in paragraphs (e)(1)(i) and (e)(1)(ii) of this section does not exempt a fishing vessel from having to carry and accommodate a WCPFC observer pursuant to § 300.215 or other applicable regulations.

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