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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 150619537-5615-01]

RIN 0648-BF19

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Bigeye Tuna Catch Limits in Longline Fisheries for 2015

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 establish a catch limit of 3,502 metric tons (mt) of bigeye tuna (*Thunnus obesus*) for vessels in the U.S. pelagic longline fisheries operating in the western and central Pacific Ocean (WCPO) for calendar year 2015. The limit does not apply to vessels in the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands (CNMI). Once the limit of 3,502 mt is reached in 2015, retaining, transshipping, or landing bigeye tuna caught in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), which comprises the majority of the WCPO,

will be prohibited for the remainder of the calendar year, with certain exceptions. This action is necessary for the United States to satisfy its obligations under the Convention, to which it is a Contracting Party.

DATES: Effective on [*Insert date publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of supporting documents prepared for this final rule, including the regulatory impact review (RIR) and the Programmatic Environmental Assessment (PEA), are available via the Federal e-Rulemaking Portal, at *www.regulations.gov* (search for Docket ID NOAA-NMFS-2015-0085). Those documents are also available from NMFS at the following address: Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808-725-5033.

SUPPLEMENTARY INFORMATION:

Background on the Convention

The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO. To accomplish this objective, the Convention established the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC). The Commission includes Members, Cooperating Non-members, and Participating Territories (hereafter, collectively “members”). The United States is a Member. American Samoa, Guam, and the CNMI are Participating Territories.

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

A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC Web site at: www.wcpfc.int/doc/convention-area-map.

WCPFC Decision on Tropical Tunas

At its Eleventh Regular Session, in December 2014, the WCPFC adopted Conservation and Management Measure (CMM) 2014-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.” CMM 2014-01 is the most recent in a series of CMMs for the management of tropical tuna stocks under the purview of the Commission. It is a

successor to CMM 2013-01, adopted in December 2013. These and other CMMs are available at: www.wcpfc.int/conservation-and-management-measures.

The stated general objective of CMM 2014-01 and several of its predecessor CMMs is to ensure that the stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) in the WCPO are, at a minimum, maintained at levels capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors. The CMM includes specific objectives for each of the three stocks: for each, the fishing mortality rate is to be reduced to or maintained at levels no greater than the fishing mortality rate associated with maximum sustainable yield.

CMM 2014-01 went into effect February 3, 2015, and is generally applicable for the 2015-2017 period. The CMM includes provisions for purse seine vessels, longline vessels, and other types of vessels that fish for HMS. The CMM's provisions for longline vessels include catch limits for bigeye tuna and a general provision not to increase catches of yellowfin tuna.

Paragraphs 40-42 CMM 2014-01 require WCPFC members to limit catches of bigeye tuna in the Convention Area to specified levels in each of 2015, 2016, and 2017. The applicable limits for the United States in those 3 years are 3,554 metric tons (mt), 3,554 mt, and 3,345 mt, respectively. In addition, paragraph 40 of the CMM states that any catch overage in a given year shall be deducted from the catch limit for the following year. This provision was also in CMM 2013-01, the predecessor to CMM 2014-01, so it pertains to the catch limit for 2015, as well as 2016 and 2017. No limits are required for the longline fisheries of any of the U.S. Participating Territories.

Implementation of CMM 2014-01

NMFS implemented the purse seine fishing effort limits specified under CMM 2014 earlier this year (see interim final rule, 80 FR 29220; published May 21, 2015). NMFS is also undertaking a separate rulemaking to implement other requirements under CMM 2014-01 for purse seine vessels for 2015 (RIN 0648-BE84). That rule would establish a framework process through which NMFS could specify limits on fishing effort and catches, as well as spatial and temporal restrictions on particular fishing activities and other requirements, in U.S. fisheries for HMS in the WCPO, to implement particular decisions of the Commission. Using that framework process, NMFS would establish specific limits for 2015, including restrictions on the use of fish aggregating devices by purse seine vessels. The rule would also implement several other unrelated WCPFC decisions and make some changes to existing regulations that implement WCPFC decisions, including the longline bigeye tuna catch limits. However, the rule would not affect the 2015 longline bigeye tuna catch limit being implemented in this final rule. Rather, it is anticipated that longline catch limits in future years would be implemented pursuant the framework and other requirements established in the separate rulemaking (RIN 0648-BE84).

Provisions Implemented in this Action

This final rule is limited to implementing the 2015 calendar year longline bigeye tuna catch limit for U.S. fisheries in the Convention Area, as mandated under CMM 2014-01. As stated above, the limit for 2015 is 3,554 mt less any overage of the limit applicable for 2014. The applicable limit for 2014 was 3,763 mt (see the final rule that established that limit at 78 FR 58240; published September 23, 2013). NMFS has

estimated that bigeye tuna catches in the U.S. longline fishery in the Convention Area in 2014 were 3,815 mt, 52 mt more than the limit of 3,763 mt; therefore, the applicable limit for 2015 is 3,502 mt (3,554 minus 52).

The 2015 longline bigeye tuna catch limit will apply only to U.S.-flagged longline vessels operating as part of the U.S. longline fisheries. The limit will not apply to U.S. longline vessels operating as part of the longline fisheries of American Samoa, the CNMI, or Guam. Existing regulations at 50 CFR 300.224(b), (c), and (d) detail the manner in which longline-caught bigeye tuna is attributed among the fisheries of the United States and the U.S. Participating Territories.

Consistent with the basis for the limits prescribed in CMM 2014-01 and with previous rules issued by NMFS to implement bigeye tuna catch limits in U.S. longline fisheries, the catch limit is measured in terms of retained catches—that is, bigeye tuna that are caught by longline gear and retained on board the vessel.

Announcement of the Limit Being Reached

As set forth under the existing regulations at 50 CFR 300.224(e), if NMFS determines that the limit is expected to be reached in 2015, NMFS will publish a notice in the **Federal Register** to announce specific fishing restrictions that will be effective from the date the limit is expected to be reached until the end of the 2015 calendar year. NMFS will publish the notice of the restrictions at least 7 calendar days before the effective date to provide vessel owners and operators with advance notice. Periodic forecasts of the date the limit is expected to be reached will be made available to the public, such as by posting on a Web site, to help vessel owners and operators plan for the possibility of the limit being reached.

Restrictions after the Limit is Reached

As set forth under the existing regulations at 50 CFR 300.224(f), if the limit is reached, the restrictions that will be in effect will include the following:

1. Retain on board, transship, or land bigeye tuna: Starting on the effective date of the restrictions and extending through December 31 of 2015, it will be prohibited to use a U.S. fishing vessel to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear, except as follows:

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

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

Third, bigeye tuna captured by longline gear can be retained on board, transshipped, and/or landed if they are caught by a vessel that is included in a specified fishing agreement under 50 CFR 665.819(d), in accordance with 50 CFR 300.224(f)(iv).

2. *Transshipment of bigeye tuna to certain vessels*: Starting on the effective date of the restrictions and extending through December 31 of 2015, it will be prohibited to transship bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

3. *Fishing inside and outside the Convention Area*: To help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, the final rule establishes two additional, related prohibitions that are in effect starting on the effective date of the restrictions and extending through December 31 of 2015. First, vessels are prohibited from fishing with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel still must land any bigeye tuna taken in the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a vessel is used to fish using longline gear outside the Convention Area and enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area. These two prohibitions do not apply to the following vessels: (1) vessels on declared shallow-setting trips pursuant to 50 CFR 665.803(a); and (2) vessels operating for the purposes of this rule as part of the longline fisheries of American Samoa, Guam, or the CNMI. This second group includes vessels registered for use under valid American Samoa Longline Limited Access Permits and vessels landing their bigeye tuna catch in one of the three U.S. Participating Territories, so long as these vessels

conduct fishing activities in accordance with the conditions described above, and vessels included in a specified fishing agreement under 50 CFR 665.819(d), in accordance with 50 CFR 300.224(f)(iv).

Classification

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

Administrative Procedure Act

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this action, because prior notice and the opportunity for public comment would be impracticable and contrary to the public interest. This rule establishes a bigeye tuna catch limit for U.S. longline fisheries in the Convention Area for 2015 that is similar to limits implemented from 2009-2014. Affected entities have been subject to longline bigeye tuna catch limits in the Convention Area since 2009, and have received information regarding NMFS' estimates of the 2015 longline bigeye tuna catch in the Convention Area and the approximate date the catch limit may be reached via NMFS' Web site and other means. Allowing for advance notice and public comment on this action is impracticable because the amount of U.S. longline bigeye tuna catch in the Convention Area to date in 2015 has been greater than in prior years, and it is critical that NMFS publish the catch limit for 2015 as soon as possible to ensure that it is not exceeded, in compliance with our international legal obligations with respect to CMM 2014-01. Based on preliminary data available to date, NMFS expects that the applicable limit of 3,502 mt is likely to be reached in early August of 2015. Delaying this rule to allow for advance notice and public comment would bring a substantial risk that more

than 3,502 mt of bigeye tuna would be caught by U.S. longline fisheries operating in the WCPO, constituting non-compliance by the United States with respect to the longline bigeye tuna catch limit provisions of CMM 2014-01 for calendar year 2015. Because a delay in implementing this limit for 2015 could result in the United States violating its international legal obligations with respect to the longline bigeye tuna catch limit provisions of CMM 2014-01, which are important for the conservation and management of tropical tuna stocks in the WCPO, allowing advance notice and the opportunity for public comment would be contrary to the public interest.

For the reasons articulated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this rule. As described above, NMFS must implement the longline bigeye tuna catch limit provisions of CMM 2014-01 for 2015 as soon as possible, in order to ensure that the catch limit is not exceeded. The catch limit is intended to reduce or otherwise control fishing pressure on bigeye tuna in the WCPO in order to restore this stock to levels capable of producing maximum sustainable yield on a continuing basis. According to the NMFS stock status determination criteria, bigeye tuna in the Pacific Ocean is currently experiencing overfishing. Failure to immediately implement the 2015 catch limit would result in additional fishing pressure on this stock, in violation of international and domestic legal obligations.

Executive Order 12866

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

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, no final regulatory flexibility analysis was required and none has been prepared.

List of Subjects in 50 CFR Part 300

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

Dated: July 17, 2015.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

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

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

2. In § 300.224, paragraph (a) is revised to read as follows:

§ 300.224 Longline fishing restrictions.

(a) *Establishment of bigeye tuna catch limit.* There is a limit of 3,502 metric tons of bigeye tuna that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States during calendar year 2015.

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