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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 170109046-7749-01]

RIN 0648-XF156

**Pacific Island Pelagic Fisheries; 2017 U.S. Territorial
Longline Bigeye Tuna Catch Limits**

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

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes a 2017 limit of 2,000 metric tons
(mt) of longline-caught bigeye tuna for each U.S. Pacific
territory (American Samoa, Guam, and the Northern Mariana
Islands). NMFS would allow each territory to allocate up to
1,000 mt each year to U.S. longline fishing vessels in a
specified fishing agreement that meets established
criteria. As an accountability measure, NMFS would monitor,
attribute, and restrict (if necessary) catches of longline-
caught bigeye tuna, including catches made under a
specified fishing agreement. The proposed catch limits and
accountability measures would support the long-term
sustainability of fishery resources of the U.S. Pacific
Islands.

DATES: NMFS must receive comments by [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2017-0004, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0004>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments

(enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIRO Sustainable Fisheries, 808-725-5176.

SUPPLEMENTARY INFORMATION: NMFS proposes to specify a 2017 catch limit of 2,000 mt of longline-caught bigeye tuna for each U.S. Pacific territory. NMFS would also authorize each U.S. Pacific territory to allocate up to 1,000 mt of its 2,000-mt bigeye tuna limit to U.S. longline fishing vessels that are permitted to fish under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). Those vessels must be identified in a specified fishing agreement with the applicable territory. The Western Pacific Fishery Management Council recommended these specifications. The proposed catch and allocation limits and accountability measures are identical to those that NMFS specified for each U.S. territory in 2016 (81 FR 63145, September 14, 2016).

NMFS will monitor catches of longline-caught bigeye tuna by the longline fisheries of each U.S. Pacific territory, including catches made by U.S. longline vessels operating under specified fishing agreements. The criteria that a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, will

follow the procedures in 50 CFR 665.819 (Territorial catch and fishing effort limits). When NMFS projects that a territorial catch or allocation limit will be reached, NMFS would, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (if the territorial catch limit is projected to be reached), and/or vessels in a specified fishing agreement (if the allocation limit is projected to be reached).

On March 20, 2017, in *Territory of American Samoa v. NMFS, et al.* (16-cv-95, D. Haw), a Federal judge vacated and set aside a NMFS rule that amended the American Samoa Large Vessel Prohibited Area (LVPA) for eligible longliners. The Court held that the action was inconsistent with the "other applicable law" provision of the Magnuson-Stevens Act by not considering the protection and preservation of cultural fishing rights in American Samoa under the Instruments of Cession. The Instruments of Cession do not specifically mention cultural fishing rights, and the Court's decision, although recognizing the need to protect those rights, does not define them. The Council is currently reevaluating the LVPA rule, including options to define cultural fishing rights in American Samoa that are subject to preservation and protection. NMFS

specifically invites public comments on this proposed action that address the impact of this proposed rule on cultural fishing rights in American Samoa.

NMFS will consider public comments on the proposed action and will announce the final specifications in the *Federal Register*. NMFS must receive any comments by the date provided in the **DATES** heading. NMFS may not consider any comments not postmarked or otherwise transmitted by that date. Regardless of the final specifications, all other management measures will continue to apply in the longline fishery.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the applicable FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant

economic impact on a substantial number of small entities. A description of the proposed action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed specification.

In this action, NMFS proposes a 2017 limit of 2,000 metric tons (mt) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI)). Without this catch limit, these U.S territories would not be subject to a limit because, as Participating Territories to the Western and Central Pacific Fisheries Commission (WCPFC), they do not have a bigeye tuna limit under international measures adopted by the WCPFC. The proposed action would also allow each territory to allocate up to 1,000 mt of its limit to U.S. longline fishing vessels in a specified fishing agreement. Each agreement must meet the established criteria in 50 CFR 665.819. As an accountability measure, NMFS would monitor, attribute, and restrict (if necessary) catches of longline-caught bigeye tuna by vessels in the applicable U.S. territory (if the territorial catch limit is projected to be reached), or by vessels operating under the applicable specified fishing agreement (if the allocation limit is projected to be reached). Payments under the specified fishing agreements

support fisheries development in the U.S. Pacific territories and the long-term sustainability of fishery resources of the U.S. Pacific Islands.

This proposed action would directly apply to longline vessels permitted Federally under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (Pelagic FEP). Specifically, this action would apply to Hawaii longline limited entry, American Samoa longline limited entry, and Western Pacific general longline permit holders.

As of July 2017, there were 145 vessels with Hawaii permits (out of 164 total) and 44 with American Samoa permits (out of 60 total). There were no Western Pacific general longline permits as of July 2017.

Based on logbook data collected by NMFS, Hawaii longline vessels landed approximately 33,401,000 lb of fish valued at \$101,582,000 in 2016. With 142 vessels making either a deep- or shallow-set trip in 2016, the ex-vessel value of pelagic fish caught by Hawaii-based longline fisheries averaged about \$715,336 per vessel in 2016. Fishery performance data for the American Samoa longline fishery in 2016 is not yet available. In 2015, American Samoa-based longline vessels landed approximately 4,756,195 lb of fish, of which 4,662,869 lb was sold, valued at \$4,994,004. Albacore made up the largest proportion of

longline commercial landings at 3,475,497 lb. With 18 active longline vessels in 2015, the ex-vessel value of pelagic fish caught by American Samoa-based longline fisheries averaged about \$277,445 per vessel in 2015.

For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. Based on available information, NMFS has determined that all vessels permitted Federally under the Pelagic FEP are small entities, i.e., they are engaged in the business of fish harvesting (NAICS 114111), are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million. Even though this proposed action would apply to a substantial number of vessels, the implementation of this action would not result in significant adverse economic impacts to individual vessels.

The Pelagic FEP established a process by which NMFS could specify catch and/or effort limits for pelagic fisheries in American Samoa, Guam and CNMI, regardless of whether the WCPFC adopts a limit for those entities or not. The Pelagic FEP also allows NMFS to authorize the government of each territory to allocate a portion of their catch and/or effort limits through territorial fishing agreements. Specifically, bigeye tuna landed by vessels included in a fishing agreement are attributed to the U.S territory to which the agreement applies, and not counted towards the U.S. bigeye tuna limit established by NMFS under a separate authority in 50 CFR 300, subpart O.

In accordance with Federal regulations at 50 CFR 300, subpart O, vessels that possess both an American Samoa and Hawaii longline permit are not subject to the U.S bigeye tuna limit. Therefore, these vessels may retain bigeye tuna and land fish in Hawaii after the date that NMFS projects the fishery would reach that limit. Further, catches of bigeye tuna made by such vessels are attributed to American Samoa, provided the fish was not caught in the EEZ around Hawaii. In 2016, all dual American Samoa/Hawaii longline permitted vessels were included in the fishing agreement with CNMI. Therefore, NMFS attributed bigeye catches by those vessels to the CNMI.

On August 4, 2017, NMFS established a 2017 bigeye tuna catch limit of 3,138 mt applicable to U.S. longline fisheries (82 FR 36341). The 2017 limit is about 12 percent lower than the 2016 limit. It accounts for the planned reduction of the U.S. limit from 3,554 mt in 2016 to 3,345 mt in 2017, and adds a further reduction for exceeding the 2016 limit by 207 mt. Based on preliminary logbook data, NMFS expects the fishery to reach this limit in early September 2017.

The proposed action would potentially benefit the Hawaii fishery by allowing participants to fish under specified fishing agreements with one or more territories. This could enhance the ability of these vessels to extend fishing effort in the western and central Pacific Ocean after reaching the 2017 U.S. limit and provide more domestic bigeye tuna for markets in Hawaii and elsewhere. Providing an opportunity to land bigeye tuna in Hawaii in the last quarter of the year when market demand is high would result in positive economic benefits for fishery participants and net benefits to the Nation. Allowing participating territories to enter into specified fishing agreements under this action benefits the territories by providing funds for territorial fisheries development projects. Establishing a 2,000 mt longline limit for bigeye

tuna catch where territories are not subject to WCPFC longline limits is not likely to adversely affect vessels based in the territories.

The historical catch of bigeye tuna by the American Samoa longline fleet has been less than 2,000 mt, even including the catch of vessels based in American Samoa, catch by dual permitted vessels that land their catch in Hawaii, and catch attributed to American Samoa from U.S. vessels under specified fishing agreements. No longline fishing has occurred in Guam or the CNMI since 2011.

Under the proposed action, longline fisheries managed under the Pelagic FEP are not expected to expand substantially nor change the manner in which they are currently conducted, (i.e., area fished, number of vessels longline fishing, number of trips taken per year, number of hooks set per vessel during a trip, depth of hooks, or deployment techniques in setting longline gear), due to existing operational constraints in the fleet, the limited entry permit programs, and protected species mitigation requirements. The proposed rule does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small organizations or government jurisdictions. Furthermore, there would be little, if any, disproportionate adverse economic impacts

from the proposed rule based on gear type or relative vessel size. The proposed rule also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

This action is exempt from review under the procedures of E.O. 12866 because this action contains no implementing regulations.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2017.

Chris Oliver,
Assistant Administrator,
National Marine Fisheries Service.