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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

Docket No. 200113-0011

RIN 0648-BJ23

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for Silky Shark, Fish Aggregating Device, and Observer Safety in the Eastern Pacific Ocean

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

ACTION: Proposed rule; request for comments.

SUMMARY:

NMFS proposes regulations under the Tuna Conventions Act to implement Resolutions C-19-01 (*Amendment to Resolution C-18-05 on the Collection and Analyses of Data on Fish-Aggregating Devices*); C-19-05 (*Amendment to the Resolution C-16-06 Conservation Measures for Shark Species, with Special Emphasis on the Silky Shark (Carcharhinus Falciformis), for the Years 2020 and 2021*); and C-18-07 (*Resolution on Improving Observer Safety at Sea: Emergency Action Plan*) of the Inter-American Tropical Tuna Commission (IATTC). NMFS also proposes regulations under the Marine Mammal Protection Act to implement Resolution A-18-03 (*On Improving Observer Safety At Sea: Emergency Action Plan*) of the Agreement on the International Dolphin Conservation Program (AIDCP). This proposed rule is necessary for the United States to satisfy its obligations as a member of the IATTC and Party to the AIDCP.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2019-0149, by any 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-2019-0149>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rachael Wadsworth, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2019-0149” in the comments.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. 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. 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.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the draft Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket

NOAA-NMFS-2019-0149, or by contacting the Regional Administrator, Barry A. Thom, NMFS West Coast Region, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232-1274, or *RegionalAdministrator.WCRHMS@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Rachael Wadsworth, NMFS at 562-980-4036, or Will Stahnke at 562-980-4088.

SUPPLEMENTARY INFORMATION:

Background on the AIDCP and IATTC

The AIDCP has been ratified or acceded by 13 countries, including the United States, and is applied provisionally by another two. Among the objectives of the AIDCP are to reduce dolphin mortalities and ensure the long-term sustainability of the tuna stocks within the AIDCP Agreement Area. The full text of the AIDCP Agreement is available at: *https://www.iattc.org/PDFFiles/AIDCP/_English/AIDCP-amended-Oct-2017.pdf*.

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. Effective in 2010, the 1949 Convention was updated by the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The full text of the Antigua Convention is available online: *https://www.iattc.org/PDFFiles/IATTC-Instruments/_English/Antigua_Convention_Jun_2003.pdf*.

The IATTC consists of 21 member nations and five cooperating non-member nations. It facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention

Area is defined as waters of the eastern Pacific Ocean (EPO) within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, sharks, and billfish stocks in the IATTC Convention Area to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

International Obligations of the United States under the Antigua Convention and Agreement on International Dolphin Conservation Program (AIDCP)

As a Party to the Antigua Convention and AIDCP Agreement and a member of the IATTC and AIDCP, the United States is legally bound to implement decisions of the IATTC under the Tuna Conventions Act (16 U.S.C. 951 *et seq.*) and the AIDCP under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*). The Tuna Conventions Act (16 U.S.C. 951 *et seq.*) directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

IATTC and AIDCP Resolutions

At its 94th Meeting of the IATTC in July 2019, the IATTC adopted amendments to two Resolutions: C-19-01 (*Amendment to Resolution C-18-05 on the Collection and Analyses of Data on Fish-Aggregating Devices*) and C-19-05 (*Amendment to the Resolution C-16-06 Conservation Measures for Shark Species, with Special Emphasis on*

the Silky Shark (Carcharhinus Falciformis), for the Years 2020 and 2021). Resolution C-19-01 amended the previously adopted Resolution C-18-05 on fish aggregating devices (FADs) and revised data collection requirements to reduce the duplicative reporting on FAD interactions. The proposed regulations would eliminate duplicative reporting of FAD data that is currently required from purse seine vessel captains but that is already being collected by onboard observers. Captains would still be required to provide the observer with the FAD identification code and, as appropriate, the other information in the standard format. Resolution C-19-05 amended the previously adopted resolution C-16-06 on silky shark and extended its applicability through 2021. The amendments implement further restrictions on longline vessels and increase flexibility for accidental retention on purse seine vessels.

The IATTC adopted Resolution C-18-07 (*Resolution on Improving Observer Safety at Sea: Emergency Action Plan*) in August 2018. The Parties to the AIDCP adopted Resolution A-18-03 (*On Improving Observer Safety at Sea: Emergency Action Plan*) in October 2018. These Resolutions were adopted to strengthen protections for observers in longline and transshipment observer programs required by the IATTC and on purse seine vessels required by the AIDCP. The observer safety Resolutions detail responsibilities for vessel owners and operators, responsibilities for IATTC and AIDCP members to which fishing vessels are flagged, responsibilities for members that have jurisdiction over ports, and responsibilities for observer providers.

Proposed Regulations

This proposed rule would implement provisions in three IATTC Resolutions and one AIDCP Resolution related to FAD data reporting, silky sharks, and observer safety.

This proposed rule would apply to U.S. commercial fishing vessels that fish for tuna or tuna-like species in the IATTC Convention Area.

First, the proposed rule would revise existing regulations for FAD data collection requirements to remove the reporting requirements for captains of purse seine vessels fishing on FADs that have observers onboard. Because IATTC observers are now expected to be collecting all the information previously required on the FAD data collection form, the Commission removed this requirement for captains. Captains would still be required to provide the observer with the FAD identification code and, as appropriate, the other information in the standard format. On purse seine vessels without an observer aboard, the captain would still be responsible for recording the information on the FAD form developed by the IATTC staff.

Second, the proposed rule would ban the retention of silky shark by U.S. longline vessels. Paragraph 5 of Resolution C-19-05 on silky shark requires establishment of an inspection system at landing ports for members and cooperating non-members (CPCs) that allow retention of silky shark by longline vessels. However, when NMFS considered the time and effort required to implement a port inspection system and the impacts on U.S. longline vessels that would be subjected to such an inspection process, implementing the port inspection requirement of the Resolution would be more of a burden to the U.S. government and the public than simply prohibiting all retention of silky shark on U.S. longline vessels in the IATTC Convention Area. Therefore, this proposed rule would institute such a ban. Because U.S. longline vessels fishing in the IATTC Convention Area do not target, and infrequently catch, silky sharks, a retention ban for longline vessels would not impact current fishing practices. Data from 2008 to

2015 indicate that virtually all incidentally caught silky sharks in the IATTC Convention Area were released by U.S. longline vessels, and almost all were released alive. In addition, such a prohibition in the eastern Pacific Ocean would be consistent with U.S. regulations in the western Pacific Ocean. Since 2015, U.S. vessels fishing in the western and central Pacific Ocean have been subject to a prohibition on the retention on board, transshipping, storing, or landing any part or whole carcass of a silky shark that is caught in the Western and Central Pacific Fisheries Commission Convention Area (50 CFR 300.226).

The proposed rule would also increase flexibility for accidental retention of silky shark on purse seine vessels. Since January 2017 the IATTC Resolution and U.S. regulations have prohibited retention of silky shark on purse seine vessels caught in the IATTC Convention Area. This proposed rule would allow for exemptions in the case of any silky shark that is not seen during fishing operations and is delivered into the vessel hold. In such case, the silky shark may be stored on board and landed, but the vessel owner or operator must surrender the whole silky shark to a government authority present at the point of landing. In U.S. ports the responsible governmental authority is the NOAA Office of Law Enforcement divisional office nearest to the port. If government authorities are unavailable, the whole silky shark must not be sold or bartered but must be donated for purposes of domestic human consumption consistent with relevant laws and policies. The vessel owner, or operator shall report any silky sharks surrendered in this manner to the IATTC Secretariat by recording the incident in the note section of the IATTC Pacific Tuna Regional Logbook.

U.S. purse seine vessels do not target or intentionally retain silky shark in the IATTC Convention Area, yet they are caught incidentally and are primarily discarded. The proposed regulations are expected to provide regulatory relief from the previous prohibition on the retention of silky shark that are unintentionally caught and frozen during fishing operations, which is an infrequent event for U.S. purse seine vessels.

Observer Safety

Third, the proposed rule would implement provisions of Resolutions C-18-07 and A-18-03 to strengthen protections for observers in longline and transshipment observer programs required by the IATTC and on purse seine vessels required by the AIDCP. Paragraph 2 of the measures also provides that the measure shall not prejudice the rights of members to enforce their laws with respect to the safety of observers consistent with international law.

The observer safety Resolutions detail responsibilities for vessel owners and operators, responsibilities for IATTC and AIDCP members to which fishing vessels are flagged, responsibilities for members that have jurisdiction over ports, and responsibilities for observer providers. Most of the requirements in these Resolutions are already required by procedures implemented by the U.S. Coast Guard (USCG) in its marine casualty regulations at 46 CFR part 4. This proposed rule is intended to fill the gaps between the existing USCG procedures and these Resolutions. There are two categories of observer safety incidents (serious illness and harassment) that are specified in the IATTC and AIDCP decisions and are not included in USCG marine casualty regulations. This proposed rule would not expand the USCG marine casualty regulations to include serious illness and harassment of observers.

Both Resolutions detail a number of requirements for vessel owners and operators specifically related to vessel operations, notification, search and rescue procedures, and investigations in the event of death, injury, serious illness, missing or presumed fallen overboard, or harassment of an observer. The United States requires U.S. vessel owners or operators to notify the USCG about marine casualties, which applies in the event of death, missing or presumed fallen overboard, or serious injury of an observer. The USCG regulations in 46 CFR part 4 specify requirements for notifications, reporting, and investigations. Thus, NMFS would not promulgate additional regulations for cases of death, missing or presumed fallen overboard, or serious injury of an observer. However, the Resolutions also require that the observer provider be notified in cases of an observer that dies or goes missing, and this proposed rule includes requirements for the vessel owner or operator to notify the observer provider and a government contact.

This rule proposes additional regulations that would govern cases of serious illness, assault, intimidation, threats, interference, or harassment of observers. NMFS notes that some of these incidents lead to civil rather than criminal proceedings and can even involve circumstances that do not create emergency situations needing a specific or immediate response from the U.S. government. The NMFS West Coast Regional Administrator would post a list of appropriate contacts for U.S. government offices as well as observer providers on the NMFS WCR website:

<https://www.fisheries.noaa.gov/west-coast/partners/emergency-contacts-vessel-owners-operators-and-observers-longline-and-purse>. This website includes emails and phone numbers, which are not referenced here. In the event that an observer on a fishing vessel of the United States has been assaulted, intimidated, threatened or harassed, the owner or

operator of the fishing vessel would be required to immediately notify the observer provider and the NOAA Office of Law Enforcement West Coast Division Duty Officer line at (206) 526-4851 of the situation and the status and location of the observer.

The USCG continues to be the point of contact for other emergency situations that would necessitate an immediate USCG search and rescue, or law enforcement response. NMFS WCR does not maintain a 24-hour hotline to handle such emergencies. Thus, in emergency situations that need an immediate response, vessel owners and operators are encouraged to contact the nearest U.S. Coast Guard Rescue Coordination Center (RCC) that can help coordinate with the closest Search and Rescue (SAR) facility in the area of the vessel: *<https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Response-Policy-CG-5R/Office-of-Incident-Management-Preparedness-CG-5RI/US-Coast-Guard-Office-of-Search-and-Rescue-CG-SAR/RCC-Numbers/>*.

In addition, the proposed rule sets forth procedures the vessel owner or operator would be required to follow in the event that an observer has a serious illness. The owner or operator of a fishing vessel of the United States would be required to immediately report serious illness or injury that threatens the life and/or long-term health or safety of an observer to the observer provider and a U.S. government contact.

The rule proposes that, in the event that the observer has a serious illness or injury that threatens his or her life and/or long-term health or safety, the owner or operator of the fishing vessel must: (i) immediately cease fishing operations; (ii) take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel, and where appropriate seek external medical advice; (iii) where directed by the observer provider, if not already directed by the appropriate U.S.

government contact, facilitates the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and (iv) cooperate fully in any official investigations into the cause of the illness or injury. The Resolution and proposed regulations specify that the owner or operator of the fishing vessel must “immediately cease fishing operations.” NMFS anticipates that there may be circumstances where “immediately cease” could allow for gear to be retrieved and NMFS does not encourage abandoning fishing gear.

The proposed rule sets forth procedures the vessel owner or operator would be required to follow in the event that an observer has been assaulted, intimidated, threatened or harassed. The rule proposes that, in the event that an observer on a fishing vessel of the United States has been assaulted, intimidated, threatened or harassed, the owner or operator of the fishing vessel must: (i) immediately take action to preserve the safety of the observer and mitigate and resolve the situation on board; (ii) if the observer or the observer provider indicate that they wish for the observer to be removed from the vessel, facilitate the safe disembarkation of the observer in a manner and place, as agreed by the observer provider, that facilitates access to any needed medical treatment; and (iii) cooperates fully in any official investigations into the incident.

Classification

After consultation with the Department of State and Department of Homeland Security, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tuna Conventions Act of 1950, as amended, the Marine Mammal Protection Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

NMFS is amending the supporting statement for the West Coast Region Pacific Tuna Fisheries Logbook and Fish Aggregating Device Form, Office of Management and Business (OMB) Paperwork Reduction Act (PRA) requirements (OMB Control No. 0648-0148) to clarify that the data collection requirements for FADs are only required for purse seine vessels without an observer onboard, include requirements to report incidentally caught silky shark that are surrendered or donated, and report incidences involving observers on purse seine vessels. NMFS estimates that the public reporting burden for FAD reporting would be reduced by five minutes. The requirements to report accidentally caught silky shark is expected to average one minute per form and the reporting related to observer safety on purses seine vessels is estimated to average five minutes per reporting incident. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

NMFS is also amending the supporting statement for the Pacific Islands Region Logbook Family of Forms, Office of Management and Business (OMB) Paperwork Reduction Act (PRA) requirements Control No. 0648-0214. Notifications related to observer safety on longline vessels are expected to be rare, and are estimated to average five minutes per reporting incident. Regarding the elements of the rule pertaining to prohibiting retention of silky sharks on longline vessels; there are no new collection-of-information requirements associated with this action that are subject to the PRA, and

existing collection-of-information requirements still apply under the following Control Numbers: 0648-0593 and 0648-0214.

NMFS requests any comments on the PRA package, including whether the paperwork would unnecessarily burden any vessel owners and operators. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the **ADDRESSES** above, and by e-mail to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a 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. All currently approved NOAA collections of information may be viewed at:

http://www.cio.noaa.gov/services_programs/prasubs.html.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is provided in the following paragraphs.

The United States Small Business Administration (SBA) defines a “small business” (or “small entities”) as one with annual revenue that meets or is below an established size standard. NMFS has established that the small business size standard for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes (80 FR 81194, December 29, 2015), is \$11 million in annual gross receipts. The standard is to be used in place of the U.S. SBA standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors, respectively, of the U.S. commercial fishing industry.

The action would apply to United States purse seine, longline, and transshipment vessels registered and authorized to fish for tuna or tuna-like species in IATTC Convention Area. The IATTC Convention Area includes the waters bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian. This area includes the United States West Coast Exclusive Economic Zone (EEZ). The entities directly affected by the actions of this proposed action are: (1) U.S. purse seine vessels that use FADs to fish for tuna or tuna-like species in the IATTC Convention Area, (2) U.S. purse seine and longline vessels that catch silky shark, and (3) U.S. purse seine and longline vessels that carry observers. Per the \$11 million size standard, the FAD components of this rule would affect both large and small business; the longline vessels that would be affected by the silky shark component of this rule are small businesses. No U.S. transshipment vessels would be affected by the proposed regulations, therefore, impacts to these vessels are not discussed below.

Purse Seine

As of October 2019, there are 17 large, size class six (greater than or equal to 425 cubic meters) U.S. purse seine vessels registered to fish in the EPO that are expected to be impacted by this rule; these vessels always carry observers, potentially fish on FADs, and incidentally catch silky shark. These vessels have typically been based in the western and central Pacific Ocean (WCPO). U.S. large purse seine vessels fishing in the EPO primarily target yellowfin, skipjack, and bigeye tuna by fishing on floating objects and unassociated sets. They do not target silky sharks. Additionally, there are 14 small (less than 425 cubic meters) registered U.S. purse seine vessels that are not subject to the 100 percent observer requirement and currently do not carry observers, do not fish using FADs, do not target or incidentally catch silky sharks, and fish primarily in or near coastal zones. As such, this action does not currently apply to, and is not expected to impact these smaller vessels.

Estimates of ex-vessel revenues for large U.S. purse seine vessels fishing in the IATTC Convention Area from 2005 to 2014 have been confidential and may not be publicly disclosed because of the small number of vessels in the fishery. However, beginning in 2015, more than three large purse seine vessels fished either exclusively in the EPO, or fished in both the EPO and WCPO. Thus, information from 2015 to 2018 is not confidential.

Ex-vessel price information specific to individual large purse seine vessels are not available to NMFS because these vessels did not land on the U.S. West Coast and the cannery receipts are not available through the IATTC. However, Regional Purse Seine Logbook (RPL) data from the Pacific Islands Fisheries Science Center (PIFSC), and observer data from the IATTC may be used as a proxy for fish landings by large U.S.

purse seiners, in lieu of cannery receipts. Since neither gross receipts nor ex-vessel price information specific to individual fishing vessels are available to NMFS, NMFS applied indicative regional cannery prices—as approximations of ex-vessel prices—to annual catches of individual vessels attained from RPLs and IATTC observer data, to estimate the vessels' annual receipts. Indicative regional cannery prices are available through 2018 (developed by the Pacific Islands Forum Fisheries Agency; available at <https://www.ffa.int/node/425>). NMFS estimated annual receipts for vessels during 2016 to 2018 for purse seine vessels that fished in both the EPO and WCPO and those that fish only the EPO. Using this approach, NMFS estimates that among the affected vessels, the range in annual average receipts in 2016 to 2018 was \$2 million to \$15 million with an average of about \$9 million. Thus, NMFS estimates that slightly more than half of the affected large purse seine vessels are small entities.

Based on limited financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that almost 75 percent of the purse seine fishing entities, 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 \$11.0 million. Analysis of the average revenue, by vessel, for the three years of 2016-2018 (most recent data available) shows that average annual revenue among vessels in the fleet was about \$9.0 million. The three-year annual averages were less than the \$11 million threshold for 28 vessels in the fleet, including 13 of the 16 vessels on both the IATTC Regional Vessel Register (RVR) and WCPFC Vessel Register.

U.S. vessel owners and operators of purse seine vessels that carry observers in the EPO, use FADs to fish for tuna or tuna-like species, and that catch silky shark in the IATTC Convention Area, are all large purse seine vessels and are both large and small entities. The impacts of the proposed action are described in detail below.

Proposed Action on Silky Shark

Since 2005, the observer coverage rate on class size six vessels in the EPO has been 100 percent. The best available data from observers on large purse seine vessels from 2005 forward, show that the incidental catches of silky shark are primarily discarded, but that a small percentage has been landed in the past ten years. For example, in 2015, about three percent of the total catch of silky sharks caught by U.S. purse seine vessels in the IATTC Convention Area were landed, and the rest were discarded either dead or alive. Resolution C-16-06 entered into force on January 1, 2017, which implemented a prohibition on silky shark retention. From 2017 to 2018, 0.2 percent of silky sharks that were caught by U.S. purse seine vessels in the EPO were retained. The proposed action would allow exemptions for silky shark not seen during fishing operations and delivered into the vessel hold. In these situations, the silky shark may be stored on board and landed, but the vessel owner or operator must surrender the whole silky shark to the responsible government authority present at the point of landing. If the governmental authorities are unavailable, the whole silky shark surrendered must not be sold or bartered but must be donated for purposes of domestic human consumption. The observers or the vessel owner or operator shall report these incidences to the IATTC. It is not expected that the proposed changes in retention requirements would substantially change the vessels' fishing practices, and would impose a minimal reporting time burden

for vessel owners and operators to report these incidences, and is not expected to reduce profitability.

Proposed Action on Observer Safety

As explained in the preamble of this proposed rule, several provisions of the emergency action plan included in Resolutions C-18-07 and A-18-03 are already required by the USCG. However, this proposed action is intended to fill the gaps between the existing USCG marine casualty requirements at 46 CFR part 4 and these Resolutions. These gaps consist primarily of how to handle cases of harassment, intimidation, and serious illness of an observer onboard a purse seine vessel. Resolution A-18-03 applies to observers on purse seine vessels. There is 100 percent observer coverage on class size six purse seine vessels fishing in the IATTC Convention Area, while smaller purse seine vessels are not subject to the 100 percent observer coverage requirement and currently are not observed. The proposed action defines responsibilities for EPO purse seine vessel owners and operators, for IATTC and AIDCP members to which the fishing vessels are flagged, for members that have jurisdiction over ports, and for observer providers in these cases, and would require the vessel owner or operator to contact identified U.S. government contacts and observer providers. These safety action and reporting protocols are not expected to incur negative economic impacts to the affected vessels, fishing practices are not expected to change, and these emergency situations are expected to occur infrequently.

Proposed Action on FAD Reporting

Currently, captains of the 17 large purse seiners that use FADs, as well as onboard observers, collect FAD information, inventory, and activity data. The proposed action to

implement Resolution C-19-01, will eliminate the duplicative FAD data reporting requirement for purse seine vessel captains to collect this data, as onboard fishery observers already collect FAD data. The proposed action is not expected to have any impact on FAD usage or fishing practices and would decrease the record-keeping burden for captains in the large purse seine FAD fishery. No negative economic impacts resulting from the proposed action are expected to occur.

Longline

As of October 2019, there are 159 U.S. longline vessels registered on the IATTC RVR and have the option to fish in the IATTC Convention Area. The majority of these longline vessels possess Hawaii Longline Limited Access Permits (issued under 50 CFR 665.13). Under the Hawaii longline limited access program, no more than 164 permits may be issued. Additionally, there are U.S. longline vessels based on the U.S. West Coast, some of which operate solely under the Pacific Highly Migratory Species (HMS) permit. U.S. West Coast-based longline vessels operating under the Pacific HMS permit fish primarily in the EPO and are currently restricted to fishing with deep-set longline gear outside of the U.S. West Coast EEZ. These vessels primarily target tuna species with a small percentage of swordfish and other highly migratory species taken incidentally. Since 2008, the observer coverage rates on shallow-set and deep-set longline vessels in the EPO have been a minimum of 100 and 20 percent, respectively.

There have been less than three West Coast-based vessels operating under the HMS permit since 2005; therefore, landings and ex-vessel revenue are confidential. However, the number of Hawaii-permitted longline vessels that have landed in West Coast ports has increased from one vessel in 2006 to 22 vessels in 2018. In 2018, 996 mt

of highly migratory species were landed by Hawaii permitted longline vessels with an average ex-vessel revenue of approximately \$255,636 per vessel, well below the \$11 million threshold for finfish harvesting businesses. NMFS considers all longline vessels, for which data is non-confidential, that catch silky sharks in the IATTC Convention Area to be small entities for the purposes of the RFA. The impacts of the proposed action on these vessels are described in detail below.

Proposed Action on Silky Shark

U.S. longline vessels fishing in the IATTC Convention Area, whether under the Hawaii Longline Limited Access Permit or the Pacific HMS permit, do not target silky shark and all those caught incidentally, are released. From 2008 to 2018, data collected by observers aboard U.S. Hawaii deep-set longline vessels fishing in the IATTC Convention Area, showed a total of 65 silky sharks were caught; 72 percent of which were released alive, and the remaining 28 percent were discarded. During the same period, observers did not record any catch of silky shark on longline vessels using shallow-set gear. The proposed action would implement a full prohibition on the retention of silky shark on these vessels. It is not expected that the proposed changes would have a substantial impact on the vessels' fishing practices, due to the vessels already not having any intentional or unintentional retention of silky shark in the EPO. The proposed action is not expected to reduce profitability, thus, compliance with this measure is not expected to incur negative economic impacts to affected EPO U.S. longline vessels.

Proposed Action on Observer Safety

Resolution C-18-07 applies to observers in longline and transshipment observer programs required by the IATTC. The proposed action defines responsibilities for EPO longline vessel owners and operators, for IATTC and AIDCP Members to which the fishing vessels are flagged, for Members that have jurisdiction over ports, and for observer providers in these cases. These safety action and reporting protocols are not expected to incur negative economic impacts to the affected vessels, fishing practices are not expected to change, and issues that arise where the protocols are applicable occur infrequently.

Conclusion

In summary, the proposed action is not expected to substantially change the typical fishing practices of affected vessels, and any impact to the profitability of U.S. vessels is expected to be minor. NMFS has determined that the action is not expected to have a significant economic impact on a substantial number of small entities. The action is also not expected to have a disproportional economic impact on small business entities relative to the large entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Parts 216 and 300

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

Dated: January 14, 2020.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR parts 216 and 300 are proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Revise § 216.24, all references to “Southwest Region” to read “West Coast Region” and add paragraph (e)(4)(i) to read as follows:

§216.24 Taking and related acts in commercial fishing operations including tuna purse seine vessels in the eastern tropical Pacific Ocean.

* * * * *

(e) * * *

(4) * * *

(ii) Requirements for owners and operators of U.S. purse seine vessels for reporting and actions in response to observer safety are at 50 CFR 300.29.

(ii) [Reserved]

* * * * *

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

3. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

4. In § 300.22, revise paragraph (a)(3)(i) to read as follows:

§ 300.22 Recordkeeping and reporting requirements.

(a) * * *

(3) * * *

(i) *Reporting on FAD interactions:* U.S. purse seine vessel operators shall provide the observer with the FAD identification code and, as appropriate, the other information in the FAD interaction standard format provided by the HMS Branch. U.S. vessel owners and operators, without an observer onboard, must ensure that any interaction or activity with a FAD is reported using a FAD interaction standard format provided by the HMS Branch. The owner and operator shall ensure that the form is submitted within 30 days of each landing or transshipment of tuna or tuna-like species to the address specified by the HMS Branch.

* * * * *

5. In § 300.24, revise paragraphs (ff) through (hh) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(ff) Fail to provide information to an observer or record or report data on FADs as required in § 300.22(a)(3).

(gg) Use a commercial purse seine or longline fishing vessel of the United States to retain on board, transship, store, or land any part or whole carcass of a silky shark (*Carcharhinus falciformis*) in contravention of § 300.27(e).

(hh) Fail to follow observer safety requirements as specified under § 300.29.

* * * * *

6. In § 300.27, revise paragraphs (e) and (f) to read as follows:

§ 300.27 Incidental catch and tuna retention requirements.

* * * * *

(e) *Silky shark restrictions for purse seine vessels.* The crew, operator, and owner of a commercial purse seine or longline fishing vessel of the United States used to fish for tuna or tuna-like species is prohibited from retaining on board, transshipping, storing, or landing any part or whole carcass of a silky shark (*Carcharhinus falciformis*) that is caught in the IATTC Convention Area, except as provided in paragraph (f) of this section.

(f) *Exception for silky shark unintentionally caught and frozen:* In the case of a purse seine vessel operating in the IATTC Convention Area that catches a silky shark that is not seen during fishing operations and is delivered into the vessel hold, the silky shark may be stored on board and landed, but the vessel owner or operator must surrender the whole silky shark to the responsible government authority present at the point of landing. In U.S. ports the responsible governmental authority is the NOAA Office of Law Enforcement divisional office nearest to the port, or other authorized personnel. If no governmental authorities are available, the whole silky shark surrendered must not be sold or bartered but must be donated for purposes of domestic human consumption consistent with relevant laws and policies. The vessel owner or operator shall report these incidences to the IATTC Secretariat by recording them in the IATTC Regional Purse Seine Logbook, or another form identified by NMFS.

* * * * *

7. Add § 300.29 to read as follows:

§ 300.29 Observers.

Observer Safety. The following requirements apply to all on-board fisheries observers required under this subpart, which includes observers on purse seine, longline vessels, and transshipment carrier vessels, and while on a fishing trip in the IATTC Convention Area.

(a) *Contact information.* A full list of U.S. longline and IATTC purse seine observer providers and U.S. government contacts for situations described below is available at the following website: <https://www.fisheries.noaa.gov/west-coast/partners/emergency-contacts-vessel-owners-operators-and-observers-longline-and-purse>.

(b) *Loss of life.* In the event that an observer dies, is missing or presumed fallen overboard, the fishing vessel must immediately notify a U.S. government contact and the observer provider.

(c) *Serious illness or injury.* The owner or operator of a fishing vessel of the United States shall immediately report serious illness or injury that threatens the life and/or long-term health or safety of an observer to the observer provider and a U.S. government contact. In addition, the fishing vessel must:

(1) Immediately cease fishing operations;

(2) Take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel, and where appropriate seek external medical advice;

(3) Where directed by the observer provider, if not already directed by the appropriate U.S. government contact, facilitates the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and

(4) Cooperate fully in any official investigations into the cause of the illness or injury.

(d) *Assault, intimidation, threat, or harassment.* For reporting violations in the event that an observer on a fishing vessel of the United States has been assaulted, intimidated, threatened or harassed, the owner or operator of the fishing vessel shall immediately notify the observer provider and the NOAA Office of Law Enforcement West Coast Division Duty Officer line at (206) 526-4851 of the situation and the status and location of the observer. In addition, the fishing vessels must:

(1) Immediately take action to preserve the safety of the observer and mitigate and resolve the situation on board;

(2) If the observer or the observer provider indicate that they wish for the observer to be removed from the vessel, facilitate the safe disembarkation of the observer in a manner and place, as agreed by the observer provider and a U.S. government contact, that facilitates access to any needed medical treatment; and

(3) Cooperates fully in any official investigations into the incident.

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