

(iii) Are at high-risk for accidents or incidents as defined by the State or the District of Columbia in the action plan;

(2) Identify data sources used to categorize the highway-rail grade crossings in paragraph (e)(1) of this section;

(3) Discuss specific strategies, including highway-rail grade crossing closures or grade separations, to improve safety at those crossings over a period of at least five years;

(4) Provide an implementation timeline for the strategies discussed in paragraph (d)(2) of this section; and

(5) Designate an official responsible for managing implementation of the State highway-rail grade crossing action plan.

(f) *Electronic submission.* (1) When the State or the District of Columbia submits its highway-rail grade crossing action plan or updated action plan and implementation report electronically through FRA's website, the State or the District of Columbia shall provide the following information to FRA for the designated official described in paragraph (e)(5) of this section:

(i) The name and title of the designated official;

(ii) The business mailing address for the designated official;

(iii) The email address for the designated official; and

(iv) The daytime business telephone phone for the designated official.

(2) If the State or the District of Columbia designates another official to assume the responsibilities described in paragraph (e)(5) of this section, the State or the District of Columbia shall contact FRA and provide the information listed in paragraph (f)(1) of this section for the new designated official.

(g) *Review and approval.* (1) FRA will update its website to reflect receipt of each new, updated, or corrected highway-rail grade crossing action plan submitted pursuant to this section.

(2)(i) Within sixty (60) days of receipt of each new, updated, or corrected highway-rail grade crossing action plan, FRA will conduct a preliminary review of the action plan to determine if the elements prescribed in paragraph (e) of this section are included in the plan.

(ii) Each new, updated, or corrected State highway-rail grade crossing action plan shall be considered conditionally approved for purposes of this section unless FRA notifies the designated official described in paragraph (e)(5) of this section within sixty (60) days of receipt that the highway-rail grade crossing action plan is incomplete or deficient.

(iii) FRA reserves the right to conduct a more comprehensive review of each

new, updated, or corrected State highway-rail grade crossing action plan within 120 days of receipt.

(3) If FRA determines that the new, updated, or corrected highway-rail grade crossing action plan is incomplete or deficient:

(i) FRA will provide email notification to the designated official described in paragraph (e)(5) of this section of the specific areas in which the plan is deficient and allow the State or the District of Columbia to complete the plan and correct the deficiencies identified.

(ii) Within 60 days of the date of FRA's email notification that the highway-rail grade crossing action plan is incomplete or deficient, the State or District of Columbia shall correct all deficiencies and submit the corrected State highway-rail grade crossing action plan to FRA for approval. The State or District of Columbia shall submit its corrected highway-rail grade crossing action plan electronically through FRA's website in PDF form.

(4)(i) When a new, updated, or corrected State highway-rail grade crossing action plan is fully approved, FRA will provide email notification to the designated official described in paragraph (e)(5) of this section.

(ii) FRA will make each fully-approved State highway-rail grade crossing action plan publicly available for online viewing.

(iii) Each State and the District of Columbia shall implement its fully-approved highway-rail grade crossing action plan.

(h) The Secretary of Transportation may condition the awarding of any grants under 49 U.S.C. ch. 244 on the State's or District of Columbia's submission of an FRA-approved State highway-rail grade crossing action plan under this section.

Issued in Washington, DC.

Ronald L. Batory,
Administrator, Federal Railroad Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 191101-0073]

RIN 0648-BH59

International Fisheries; Eastern Pacific Tuna Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Area of Overlap Between the Convention Areas of the Inter-American Tropical Tuna Commission and the Western and Central Pacific Fisheries Commission

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS seeks comments on this proposed rule issued under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA) and the Tuna Conventions Act. The proposed rule would revise the management regime for fishing vessels that target tunas and other highly migratory fish species (HMS) in the area of overlapping jurisdiction in the Pacific Ocean between the Inter-American Tropical Tuna Commission (IATTC) and the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The proposed rule would apply all regulations implementing IATTC resolutions in the area of overlapping jurisdiction. Under this proposed rule, regulations implementing WCPFC decisions on catch and fishing effort limits, bycatch mitigation measures, and associated reporting requirements would no longer apply in the area of overlapping jurisdiction. However, regulations implementing WCPFC management measures related to monitoring, control, and surveillance would continue to apply in the area of overlapping jurisdiction. NMFS is undertaking this action based on an evaluation of the management regime in the area of overlapping jurisdiction, in order to satisfy the obligations of the United States as member of the IATTC and the WCPFC, pursuant to the authority of the WCPFCIA and the Tuna Conventions Act.

DATES: Comments on the proposed rule must be submitted by November 22, 2019.

ADDRESSES: You may submit comments on the proposed rule and the regulatory impact review (RIR) prepared for the proposed rule, identified by NOAA–NMFS–2018–0049, by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2018-0049,

2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

—OR—

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments must be submitted by electronic submission or mail 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, might 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 and address), 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).

An initial regulatory flexibility analysis (IRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the RIR and the environmental assessment (EA) prepared for the proposed rule are available at www.regulations.gov or may be obtained via mail from Michael D. Tosatto, Regional Administrator, NMFS PIRO.

FOR FURTHER INFORMATION CONTACT: Alex Kahl, NMFS PIRO, 808–725–5031.

SUPPLEMENTARY INFORMATION:

Background

The United States is a member of both IATTC and WCPFC. NMFS implements decisions of WCPFC under the authority of the WCPFCIA (16 U.S.C. 6901 *et seq.*), and decisions of IATTC under the authority of the Tuna Conventions Act (16 U.S.C. 951 *et seq.*). The convention

areas for the IATTC (IATTC Area) and WCPFC (WCPFC Area) overlap in the Pacific Ocean waters within an area bounded by 50° S latitude, 4° S latitude, 150° W longitude, and 130° W longitude (“overlap area”). Historically, regulations implementing the conservation measures adopted by both IATTC (50 CFR 300, subpart C) and WCPFC (50 CFR 300, subpart O) applied to U.S. vessels fishing for highly migratory species (HMS) in the overlap area. In 2012, IATTC and WCPFC adopted decisions allowing each member belonging to both commissions to decide, for a period of not less than 3 years, whether IATTC or WCPFC conservation and management measures would apply to its vessels when they fish in the overlap area.

In accordance with WCPFC and IATTC decisions regarding the overlap area,¹ NMFS undertook a rulemaking regarding management of the overlap area. After issuing a proposed rule for public review and comment, NMFS issued a final rule on April 26, 2016 (81 FR 24501 (Apr. 26, 2016), effective May 26, 2016; hereafter “2016 final rule”), stating that except for IATTC Regional Vessel Register (RVR) regulations at 50 CFR 300.22(b), all other regulations implementing IATTC decisions at 50 CFR 300, subpart C would no longer apply in the overlap area. The IATTC RVR regulations continued to apply in the overlap area for compliance with U.S. obligations under the Agreement on the International Dolphin Conservation Program (AIDCP). Under the 2016 final rule, regulations implementing WCPFC conservation and management measures applied in the overlap area. In the preamble to the 2016 final rule, NMFS indicated that it may reevaluate the location of fishing effort in the eastern Pacific Ocean (EPO) and western and central Pacific Ocean (WCPO) in three years to consider revising the management regime for the overlap area.

Accordingly, in June 2018, NMFS revisited this decision and published an advance notice of proposed rulemaking (ANPR) (83 FR. 27305; June 12, 2018) seeking public input about whether conservation and management measures adopted by WCPFC or IATTC should apply in the overlap area. NMFS received ten comments in response to the ANPR (all from the U.S. purse seine

industry), unanimously supporting application of IATTC measures rather than WCPFC measures in the overlap area. The commenters generally stated there would be more fishing opportunities under IATTC measures than under WCPFC measures, maintaining that WCPFC measures result in more constraining fishery closures than IATTC measures, and that the escalating cost of fishing days in foreign exclusive economic zones (EEZ) in the WCPFC Area, makes high seas within the overlap area an increasingly attractive fishing ground.

NMFS’ analyses (EA and RIR) of the comparative economic effects and environmental effects of the application of WCPFC measures or IATTC measures in the overlap area concludes that application of IATTC measures would likely result in greater net benefits to the nation. These greater net benefits arise from more fishing opportunity and greater operational certainty provided by the option of annually choosing one of the IATTC’s two 72-day purse seine closure periods instead of the WCPFC purse seine fishing effort limits and fish aggregating device (FAD) closure periods currently applicable to the overlap area under NMFS regulations at 50 CFR 300.223. Under the current WCPFC-derived regulations, FAD fishing is prohibited in the overlap area for five months of the year (one three-month closure in the entire overlap area, and an additional two-month closure on the high seas of the overlap area), and there is uncertainty regarding when the fishing effort limits would be reached, which would result in a fishery closure for the remainder of the year. More fishing opportunity and operational certainty would be particularly beneficial during El Niño events, when tropical tuna are more likely to be found in the EPO. Any potential increase in fishing activity would provide net benefits while continuing to meet IATTC objectives of conserving target stocks and minimizing impacts to protected species and their environments. Accordingly, NMFS is issuing this proposed rule to apply IATTC measures in the overlap area instead of WCPFC measures, except as described herein.

During development of the 2016 final rule, NMFS stated that, rather than applying IATTC measures to an individual vessel or gear type and WCPFC measures to another vessel or gear type, NMFS would apply WCPFC’s management measures to the entire U.S. fleet in the overlap area because the WCPFC and the IATTC each separately develop a comprehensive and self-contained package of management

¹ IATTC Recommendation C–12–11, “IATTC–WCPFC Overlap Area,” and the WCPFC decision documented in “Summary Report of the Ninth Regular Session of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean,” Manila, Philippines, 2–6 December, 2012, paragraph 80.

measures to address similar conservation objectives. As noted during the development of the 2016 final rule, if one set of management measures were applied to some vessels while another set of management measures were applied to other vessels, overall management efforts would fail to address the conservation objectives of either organization (80 FR 80742; December 28, 2015). This proposed rule would follow the same approach as the 2016 final rule by applying to all vessels, thus maintaining uniformity in management of the overlap area for the U.S. fleet as a whole, rather than applying on an individual vessel-basis, or gear type.

When deciding which regulations to apply in the overlap area, NMFS considered whether all WCPFC-derived regulations should no longer apply in the overlap area, or whether certain WCPFC-regulations should remain in effect. The WCPFC and IATTC decisions addressing the overlap area broadly indicate that a member of both commissions, such as the United States, is to apply the “conservation and management measures” of one commission in the overlap area. Because these decisions do not address specific conservation and management measures, a Contracting Party’s decision to implement one commission’s conservation and management measures over the other could have compliance implications where legal obligations arise under treaty. In other words, as a Contracting Party to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC Convention) and the Antigua Convention, the United States is obligated to implement provisions required under both the WCPFC Convention and the Antigua Convention. The WCPFC Convention and the Antigua Convention created the WCPFC and the IATTC, respectively, and decisions of each commission are subject to their terms.

NMFS believes that while WCPFC and IATTC decisions addressing the overlap area can provide members with discretion to choose which conservation and management decisions to apply, it

cannot relieve a Contracting Party of its existing treaty obligations. Accordingly, when deciding to apply IATTC measures to the overlap area, NMFS considered whether all WCPFC measures should no longer apply in the overlap area, or whether certain WCPFC management measures should remain in effect in order for the United States to continue to meet its obligations under that WCPFC Convention. NMFS proposes that regulations implementing WCPFC measures for the conservation and management of highly migratory fish stocks, such as purse seine fishing restrictions, longline fishing restrictions, and bycatch mitigation measures would no longer apply in the overlap area, and that WCPFC management measures related to monitoring, control, and surveillance (MCS) would continue to apply, as explained in more detail below. NMFS currently implements, and would continue to implement, the MCS measures pursuant to its obligations under the WCPFC Convention.

Historically, U.S. vessels have not frequently fished for HMS in the overlap area, but the two gear types that have fished in the overlap area in recent years are troll vessels that target South Pacific albacore and purse seine vessels that target tropical tuna species. The majority of the South Pacific albacore troll fishery occurs in the WCPFC Area outside the overlap area (*i.e.*, west of 150° W), and some albacore troll fishing occurs in the overlap area. U.S. purse seine vessel activity in and around the overlap area has increased since the 2016 final rule went into effect. These fisheries are described in more detail in the Classification section.

Proposed Action

This proposed rule would change the definition of “IATTC Convention Area” at 50 CFR 300.21 to include the overlap area, so that all regulations at 50 CFR part 300, subpart C would apply in the overlap area. The requirements under the Marine Mammal Protection Act and AIDCP, including observer requirements at 50 CFR 216.24(e), which currently apply in the overlap area, would also continue to apply under the proposed rule. As stated above, pursuant to the

requirements of the AIDCP, vessels fishing in the overlap area are currently required to comply with the regulations for inclusion in the IATTC RVR. However, under the regulations at 50 CFR 300.22(b)(1), once per year, a vessel that is permitted and authorized under an alternative international tuna purse seine fisheries management regime in the Pacific Ocean (*e.g.*, WCPFC) may exercise an option to fish with purse seine gear to target tuna in the IATTC Area without its well volume counting towards the U.S. capacity limit in the IATTC Area for a fishing trip that does not exceed 90 days in duration. A total of 32 such trips are allowed each calendar year. Thus, vessels currently fishing in the overlap area are familiar with and subject to the regulations implementing IATTC decisions when fishing in the IATTC Area. The following regulations at 50 CFR part 300, subpart O, which implement WCPFC conservation and management measures for stock management and bycatch matters, would no longer apply in the overlap area:

- Purse seine fishing effort limits (50 CFR 200.223(a));
- Purse seine FAD restrictions (50 CFR 300.223(b));
- Purse seine catch retention requirements (50 CFR 300.223(d));
- Purse seine sea turtle bycatch mitigation requirements (50 CFR 300.223(f));
- Whale shark bycatch mitigation requirements (50 CFR 300.223(g)–(h));
- Longline bigeye tuna catch limits (50 CFR 300.224(a)); and
- Oceanic whitetip and silky shark interaction mitigation (50 CFR 300.226).

All other regulations implementing the WCPFC Convention and WCPFC decisions would continue to apply in the overlap area. Table 1 shows the regulations that would apply in the overlap area, and is organized to illustrate regulations implementing WCPFC decisions that are comparable to regulations implementing IATTC decisions, or to indicate where no comparable regulations exist. A detailed comparison of these regulations is provided in the sections that follow.

TABLE 1—COMPARISON OF REGULATIONS IMPLEMENTING WCPFC DECISIONS AND IATTC DECISIONS AND WHETHER THEY WOULD APPLY IN THE OVERLAP AREA UNDER THE PROPOSED RULE

| 50 CFR 300 subpart O (implementing WCPFC decisions) | Applies in overlap area under proposed rule? | Similar regulations at 50 CFR 300 subpart C or 50 CFR 216 (implementing IATTC decisions) | Applies in overlap area under proposed rule? |
|--|--|--|--|
| § 300.223(a) Purse seine fishing effort limits | No | § 300.25(e) Purse seine closures | Yes. |
| § 300.223(b) Purse seine fish aggregating devices. | No | § 300.28 Purse seine FAD restrictions | Yes. |

TABLE 1—COMPARISON OF REGULATIONS IMPLEMENTING WCPFC DECISIONS AND IATTC DECISIONS AND WHETHER THEY WOULD APPLY IN THE OVERLAP AREA UNDER THE PROPOSED RULE—Continued

| 50 CFR 300 subpart O (implementing WCPFC decisions) | Applies in overlap area under proposed rule? | Similar regulations at 50 CFR 300 subpart C or 50 CFR 216 (implementing IATTC decisions) | Applies in overlap area under proposed rule? |
|--|--|--|--|
| § 300.223(d) Purse seine catch retention | No | § 300.27(a) Tuna retention requirements for purse seine vessels. | Yes. |
| § 300.223(f) Purse seine sea turtle mitigation | No | § 300.27(c) Purse seine sea turtle handling and release. | Yes. |
| § 300.223(g)–(h) Purse seine whale shark mitigation. | No | § 300.27(g)–(h) Purse seine whale shark restrictions for purse seine vessels. | Yes. |
| § 300.224 Longline fishing restrictions | No | § 300.25(a) Longline tuna catch limits | Yes. |
| § 300.226 Oceanic whitetip shark and silky shark | No | § 300.27(d) Oceanic whitetip shark restrictions; § 300.27(e)–(f) Silky shark restrictions. | Yes. |
| No comparable requirements | NA *** | § 300.25(f) Restrictions on fishing in proximity to data buoys. | Yes. |
| No comparable requirements | NA | § 300.25(g) Pacific bluefin tuna catch limits | Yes. |
| No comparable requirements | NA | § 300.27(b) Release requirements for non-tuna species on purse seine vessels. | Yes. |
| No comparable requirements | NA | § 300.27(i)–(j) Mobulid ray restrictions | Yes. |
| No comparable requirements | NA | § 300.27(k) Shark handling and release requirements for purse seine vessels. | Yes. |
| No comparable requirements | NA | § 300.27(l) Shark line prohibition for longline vessels. | Yes. |
| § 300.212 WCPFC vessel permit endorsements | Yes | § 300.22(b) IATTC vessel register requirements | Yes. |
| § 300.213 Vessel information requirements for fishing in foreign EEZs. | Yes | No comparable requirements | NA. |
| § 300.214 Compliance with Laws of Other Nations. | Yes | No comparable requirements | NA. |
| § 300.215 Observers | Yes | § 216.24(e) Purse seine observers ** | Yes. |
| § 300.216 Transshipping, bunkering and net sharing. | Yes | § 300.25(c) Purse seine transshipment requirements. | Yes. |
| § 300.217 Vessel identification | Yes | § 300.22(b)(3)(ii) IMO numbers | Yes. |
| § 300.218 Reporting and recordkeeping requirements. | Yes * | § 300.22 Recordkeeping and reporting requirements. | Yes. |
| § 300.219 Vessel monitoring system | Yes | § 300.26 Vessel Monitoring System | Yes. |
| § 300.221 Facilitation of enforcement and inspection. | Yes | No comparable requirements | NA. |
| § 300.223(e) Purse seine observer coverage | Yes | § 216.24(e) Purse seine observers ** | Yes. |
| No comparable requirements | NA | § 216.24 Requirements for U.S. purse seine vessels fishing under the requirements of the AIDCP (e.g., vessel and operator permit requirements, requirements for fishing on dolphins, etc.) **. | Yes. |

* The whale shark reporting requirements at 50 CFR 300.218(g) would no longer apply in the overlap area.

** These regulations also implement provisions of the Marine Mammal Protection Act and the Agreement on the International Dolphin Conservation Program, and are not located at 50 CFR part 300, subpart C, but instead are located at 50 CFR part 216, subpart C.

*** NA indicates “not applicable.”

Note: Titles of regulation sections have been modified in some instances to include additional descriptive information.

Purse Seine Fishing Effort Restrictions

Under this proposed rule, regulations implementing WCPFC decisions for purse seine fishing effort would no longer apply in the overlap area, while regulations implementing IATTC decisions for purse seine fishing effort would go into effect in the overlap area.

Beginning in 2009, NMFS implemented annual limits on purse seine fishing effort on the high seas and in the U.S. EEZ in the WCPFC Area between 20° N latitude and 20° S latitude (50 CFR 300.223(a)). Under this proposed rule, such purse seine fishing effort limits set forth in WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and

management measures include purse seine effort controls that would henceforth apply in the overlap area (50 CFR 300.25(e)). These regulations specify that any U.S. purse seine vessel must observe a 72-day closure period during each of the calendar years 2019 and 2020.

FAD Management Measures

NMFS has implemented WCPFC FAD management measures ((50 CFR 300.223(b)). These include specific time periods during which purse seine vessels are prohibited from setting on FADs in the WCPFC Area in the area between 20° N latitude and 20° S latitude. Currently, the prohibition periods are from July 1 through September 30 in each calendar year for

the entire WCPFC Area and on the high seas from November 1 through December 31 in each calendar year. There is also a limit of 350 drifting active FADs per each U.S. purse seine vessel fishing in the WCPFC Area. Under the proposed rule, these regulations that implement WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include FAD management measures that would apply in the overlap area (50 CFR 300.28). These FAD management measures detailed at 50 CFR 300.28 include the following: (1) FAD identification requirements that require a unique code to be marked on the radio or satellite

buoy or the FAD; (2) U.S. vessel owners and operators of purse-seine vessels of well volume 1,200 m³ or more must not have more than 450 active FADs; (3) U.S. vessel owners and operators of purse-seine vessels for vessels of volume 426–1,199 m³ must not have more than 300 active FADs; (4) U.S. vessel owners and operators of purse-seine vessels of well volume 13–425 m³ must not have more than 120 active FADs; (5) U.S. vessel owners and operators of purse-seine vessels of well volume 0–212 m³ must not have more than 70 active FADs; (6) U.S. vessel owners, operators, and crew of purse seine vessels of class size 4–6 must not deploy a FAD during 15 days prior to the start of the vessel's selected purse seine closure period at 50 CFR 300.25(e)(1); (7) 15-days prior to the start of the vessel's selected closure period at 50 CFR 300.25(e)(1), vessel owners, operators, and crew of purse seine vessels of class size 6 must remove from the water a number of FADs equal to the number of FADs set upon by the vessel during the same 15 day period; (8) if the FAD design includes a raft, and if mesh netting is used as part of the structure, the mesh netting shall have a mesh size less than 7 centimeters and the mesh net must be tightly wrapped such that no netting hangs below the FAD when deployed; and (9) any netting used in the subsurface structure of the FAD must be tightly tied into bundles or have stretched mesh size less than 7 centimeters in a panel that is weighted on the lower end with at least enough weight to keep the netting taut in the water column.

Catch Retention and Incidental Catch Release Requirements

NMFS has implemented tuna catch retention requirements for purse seine vessels in the WCPFC Area. An owner and operator of a fishing vessel of the United States equipped with purse seine gear must ensure the retention on board at all times while at sea any bigeye tuna, yellowfin tuna, or skipjack tuna, except in the following circumstances as follows: Fish that are unfit for human consumption, including but not limited to fish that are spoiled, pulverized, severed, or partially consumed at the time they are brought on board, may be discarded; if at the end of a fishing trip there is insufficient well space to accommodate all the fish captured in a given purse seine set, fish captured in that set may be discarded, provided that no additional purse seine sets are made during the fishing trip; and fish may be discarded if necessitated by the occurrence of a serious malfunction of equipment. Under this proposed rule,

the regulations that implement WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include incidental catch and tuna retention requirements for purse seine vessels that would now apply in the overlap area (50 CFR 300.27(a)–(b)). The incidental catch release requirements for non-tuna species would apply to all purse seine vessels. Tuna retention requirements would apply to class size 4–6 purse seine fishing vessels and would require that bigeye, skipjack, and yellowfin tuna caught using purse seine gear be retained on board and landed, except for fish deemed unfit for human consumption for reasons other than size or if there is insufficient well capacity to accommodate the entire catch on the last set of a trip. All purse seine vessels would also be required to release all billfish, ray (not including mobulid ray, as described in more detail below), dorado, and other non-tuna fish species, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation.

Sea Turtle Interaction Mitigation Requirements

NMFS has implemented specific sea turtle handling requirements for U.S. purse seine vessels fishing in the WCPFC Area (50 CFR 300.223(f)). These include possession and use of specific handling gear as well as specific handling requirements. Under this proposed rule, the regulations that implement WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include requirements for purse seine vessel interactions with sea turtles (50 CFR 300.27(c)). The regulations implementing IATTC measures specify special handling and release requirements when a sea turtle is spotted in the purse seine net, entangled in the net, or brought on board the vessel alive.

Whale Shark Interaction Mitigation Requirements

NMFS has implemented specific requirements to mitigate interactions between U.S. purse seine vessels and whale sharks in the WCPFC Area. These include a prohibition on setting on whale sharks and requirements for when whale sharks are encircled in purse seine nets (50 CFR 300.223(g)–(h)). Under this proposed rule, these

regulations to implement WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include requirements to mitigate interactions between purse seine vessels and whale sharks (50 CFR 300.27(g)–(h)). These regulations implementing IATTC measures require owners, operators, and crew to not set or attempt to set a purse seine on or around a whale shark if the animal is sighted prior to the commencement of the set or the attempted set. If a whale shark is encircled in the purse seine net, the crew, operator, and owner would be required to release it as soon as possible, and must ensure that all reasonable steps are taken to ensure its safe release without towing the whale shark out of the purse seine net (e.g., using towing ropes).

Longline Bigeye Tuna Catch Limits

NMFS has implemented a specific bigeye tuna catch limit for U.S. longline vessels fishing in the WCPFC Area. The limit is 3,554 metric tons of bigeye tuna per calendar year (50 CFR 300.224(a)). Under this proposed rule, the regulations implementing these WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include an annual catch limit for longline-caught bigeye tuna that would apply in the overlap area (50 CFR 300.25(a)). The annual limit is 750 metric tons of bigeye tuna for vessels over 24 meters in overall length. The regulations implementing IATTC measures include a number of requirements that are triggered if and when the annual limit is reached, including restrictions on transshipment by longline vessels in the IATTC Area without a valid permit, and restrictions on using longline gear inside and outside of the IATTC Area on the same trip.

Oceanic Whitetip Shark Interaction Mitigation Requirements

NMFS has implemented specific requirements regarding interactions with oceanic whitetip shark for all U.S. commercial fishing vessels fishing for HMS in the WCPFC Area (50 CFR 300.226). These requirements include a prohibition on the retention, transshipment, storage or landing of oceanic whitetip shark, and specific requirements for releasing oceanic whitetip shark that are caught by vessels. Under this proposed rule, these regulations implementing WCPFC

conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include similar requirements for oceanic whitetip shark that would apply in the overlap area (50 CFR 300.27(d)). These regulations implementing IATTC measures prohibit the crew, operator, or owner from retaining on board, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of an oceanic whitetip shark and require the release of all oceanic whitetip shark (unharmed to the extent practicable) when brought alongside the vessel.

Silky Shark Interaction Mitigation Requirements

NMFS has implemented specific requirements regarding interactions with silky sharks for all U.S. commercial fishing vessels fishing for HMS in the WCPFC Area (50 CFR 300.226). These requirements include a prohibition on the retention, transshipment, storage or landing of silky sharks, and specific requirements for releasing silky sharks that are caught by vessels. Under this proposed rule, these regulations implementing WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include similar requirements for silky sharks that would apply in the overlap area (50 CFR 300.27(e)–(f)). These regulations implementing IATTC measures prohibit the crew, operator, and owner of a commercial purse seine fishing vessel from retaining on board, transshipping, storing, or landing any part or whole carcass of a silky shark caught by the vessel. Additionally, longline vessel crews, operators, and owners are required to limit the retained catch of silky shark to a maximum of 20 percent in weight of the total catch during each fishing trip.

Restrictions on Fishing in Proximity to Data Buoys

Although the WCPFC has adopted a decision for the conservation and management of data buoys, which NMFS may implement through regulations, NMFS regulations regarding fishing on data buoys do not currently apply in the overlap area. Under this proposed rule, regulations implementing IATTC management measures for fishing on data buoys would go into effect in the overlap area (50 CFR 300.25(f)). Except when the fishing vessel is operated as part of a scientific research program, a longline

or purse seine fishing vessel may not be used to fish for highly migratory species within one nautical mile of an anchored data buoy in the IATTC Area. A fishing vessel, or any fishing gear, equipment, or watercraft deployed by such a fishing vessel, cannot be used to interact with, or engage in conduct that could impair the function of, a data buoy.

Pacific Bluefin Tuna Catch Limits

There are currently no regulations implementing WCPFC decisions on Pacific bluefin tuna. Under this proposed rule, NMFS regulations implementing IATTC decisions on Pacific bluefin tuna would go into effect in the overlap area (50 CFR 300.25(g)). These regulations implementing IATTC measures impose biennial, annual and per trip catch limits to the U.S. commercial fishery for Pacific bluefin tuna. These regulations also require a purse seine vessel owner or operator to provide a pre-trip notification to NMFS 24 hours in advance of departing on the fishing trip during specific periods, as notified by NMFS.

Mobulid Ray Restrictions

There are no NMFS regulations implementing WCPFC decisions on mobulid rays that apply in the overlap area. Under this proposed rule, NMFS regulations implementing IATTC decisions on mobulid rays would go into effect in the overlap area (50 CFR 300.27(i)–(j)). These regulations implementing IATTC measures prohibit the crew, operator, and owner of a U.S. commercial fishing vessel from retaining on board, transshipping, storing, landing, selling, or offering for sale any part or whole carcass of a mobulid ray, except in the case of any mobulid ray caught on an observed purse seine vessel if that mobulid ray is not seen during fishing operations and is delivered into the vessel hold. Specific handling and release requirements also apply.

Shark Handling and Release Requirements for Purse Seine Vessels

There are no NMFS regulations implementing WCPFC handling and release requirements for sharks other than the regulations on whale shark, oceanic whitetip shark, and silky shark that currently apply in the overlap area and that are described above. Under this proposed rule, regulations implementing IATTC decisions for general shark handling and release requirements would go into effect (50 CFR 300.27(k)) in the overlap area. The crew, operator, and owner of a U.S. commercial purse seine fishing vessel would be required to promptly release

any shark (unharmed to the extent practicable, and whether live or dead) caught in the IATTC Area, as soon as it is seen in the net or on the deck, without compromising the safety of any persons. If a shark is live when caught, the crew, operator, or owner must follow release procedures specified in the regulations implementing the IATTC measures. A specific shark line prohibition for longline vessels would also go into effect and would prohibit any U.S. longline vessel used to fish for tuna or swordfish from using any shark line in the overlap area (50 CFR 300.27(l)).

Reporting and Recordkeeping Requirements

Regulations for reporting and recordkeeping implementing the WCPFC Convention and WCPFC decisions and that currently apply in the overlap area would continue to apply under the proposed rule, except for the requirement to report on purse seine interactions with whale sharks—that requirement is connected to the regulations implementing the WCPFC decision on whale sharks that would no longer apply. Regulations for reporting and recordkeeping that implement IATTC decisions would go into effect under the proposed rule and apply in the overlap area. These regulations are described in detail below.

The requirement to report on purse seine interactions with whale sharks implementing a WCPFC decision and specified at 50 CFR 300.218(h), would no longer apply in the overlap area. However, a corresponding whale shark reporting requirement implementing a IATTC decision would apply in the overlap area (50 CFR 300.22(a)(2)).

Reporting and recordkeeping regulations implementing the WCPFC Convention and decisions that would continue to apply in the overlap area include catch and effort reporting requirements (50 CFR 300.218(a)), transshipment reporting requirements (50 CFR 300.218(b)), transshipment notification requirements (50 CFR 300.218(c)), reporting requirements for discards of bigeye, yellowfin, or skipjack tuna from purse seine vessels (50 CFR 300.218(e)), reporting requirements for purse seine net sharing (50 CFR 300.218(f)), and reports of daily purse seine fishing effort (50 CFR 300.218(g)). Additional reporting and recordkeeping requirements implementing IATTC decisions would also apply in the overlap area. This includes specific logbook reporting requirements (50 CFR 300.22(a)), reporting FAD-related data from purse seine vessels (50 CFR 300.22(a)(3)(i))

and reporting on active FADs (50 CFR 300.22(a)(3)(ii)).

WCPFC Record of Fishing Vessels and IATTC Regional Vessel Register Requirements

Requirements implementing the WCPF Convention and WCPFC decisions for inclusion on the WCPFC Record of Fishing Vessels would continue to apply in the overlap area under the proposed rule. These requirements include providing certain information to obtain an endorsement on a permit under the regulations implementing the High Seas Fishing Compliance Act (50 CFR 300, subpart R) and requirements to provide certain information when fishing only in foreign EEZs (50 CFR 300.212 and 50 CFR 300.213). Additionally, as mentioned above, in order to comply with the provisions of the AIDCP, vessels fishing in the overlap area are already required to comply with the IATTC RVR requirements at 50 CFR 300.22(b) and would continue to be subject to those requirements.

Vessel Identification Requirements

Requirements implementing the WCPF Convention and WCPFC decisions for vessel identification would continue to apply in the overlap area. These include specific vessel marking requirements and requirements to obtain International Maritime Organization (IMO) numbers (50 CFR 300.217). Additionally, as mentioned above, in order to comply with the provisions of the AIDCP, vessels fishing in the overlap area are already required to comply with the IMO number requirements as part of the IATTC RVR requirements at 50 CFR 300.22(b) and would continue to be subject to these requirements. The IMO number requirements at 50 CFR 300.217 and 50 CFR 300.22(b) are essentially the same in that they both are applicable to vessels that are 100 gross register tons or greater and have provisions for exemptions.

Observers

Requirements implementing the WCPF Convention and WCPFC decisions regarding observers would continue to apply in the overlap area. These requirements include pre-trip notification requirements for vessels that are required to carry observers to monitor at-sea transshipments (50 CFR 300.215(b)), specific provisions for accommodating observers on vessels (50 CFR 300.215(c)), at-sea transshipment observer coverage requirements (50 CFR 300.215(d)), and purse seine observer coverage requirements (50 CFR

300.223(e)). Additionally, as mentioned above, in order to comply with the provisions of the AIDCP, vessels fishing in the overlap area are already required to comply with the observer provisions set forth at 50 CFR 216.24(e), and these provisions would continue to apply under the proposed rule. These requirements include specific provisions for how research and observation duties are to be carried out, specific requirements regarding marine mammals, and specific provisions for accommodating observers. Currently, vessels fishing in the overlap area are required to comply with the observer provisions of regulations implementing the WCPF Convention and decisions and regulations implementing requirements arising under the IATTC and AIDCP. In some cases, this requires a vessel to carry an observer that is designated as a cross-endorsed observer pursuant to a Memorandum of Cooperation between the WCPFC and the IATTC that allows such observers to meet the observer requirements of both organizations, or to carry two separate observers—one to carry out responsibilities arising under the WCPFC and another to carry out responsibilities arising under the IATTC and AIDCP. The existing observer coverage requirements for the overlap area would not change under this proposed rule.

Transshipment and Net Sharing

Requirements implementing the WCPF Convention and WCPFC decisions regarding transshipment and net sharing would continue to apply in the overlap area. These include prohibitions on at-sea transshipment and bunkering for purse seine vessels (50 CFR 300.216(b)(1)), requirements for at-sea transshipment observer coverage (50 CFR 300.216(b)(2)), general restrictions on transshipment and bunkering for all vessels engaged in commercial fishing of HMS in the WCPFC Area (50 CFR 300.216(b)(3)), and restrictions regarding net sharing (50 CFR 300.216(c)) that allow net sharing only between purse seine vessels in limited circumstances. Regulations that implement IATTC decisions for transshipment would go into effect under this proposed rule and would also apply in the overlap area. These IATTC regulations include prohibitions on at-sea transshipment for purse seine vessels (50 CFR 300.25(c)). The transshipment regulations implementing IATTC decisions are identical to one component of the transshipment regulations implementing the WCPF Convention and WCPFC decision, and thus

application of both the WCPFC and IATTC transshipment prohibition to purse seine vessels operating in the overlap area would not subject these vessels to additional or contradictory requirements.

Vessel Monitoring System (VMS)

Requirements implementing the WCPF Convention and WCPFC decisions regarding VMS would continue to apply in the overlap area under this proposed rule (50 CFR 300.219) and would apply to commercial fishing vessels of all sizes. Requirements implementing IATTC decisions regarding VMS would also go into effect under this proposed rule and would apply in the overlap area (50 CFR 300.26). The requirements to implement IATTC decisions apply only to commercial fishing vessels 24 meters or more in overall length. Given that the requirements implementing the WCPF Convention and WCPFC decisions already apply and would continue to apply to vessels of all sizes under this proposed rule, this proposed rule would add no new VMS requirements, and all U.S. commercial fishing vessels fishing for HMS in the overlap area would still be required to continuously operate the VMS at all times, with certain exceptions.

Other MCS Measures

Requirements implementing the WCPF Convention and WCPFC decisions regarding compliance with laws of other nations (50 CFR 300.214) and facilitation of enforcement and inspection (50 CFR 300.221) would continue to apply in the overlap area under this proposed rule. The regulations implementing IATTC decisions do not include specific provisions regarding compliance with laws of other nations or facilitation of enforcement and inspection.

Classification

The Assistant Administrator for Fisheries has determined that this proposed rule is consistent with the WCPFCIA, the Tuna Conventions Act, and other applicable laws, subject to further consideration after public comment.

Administrative Procedure Act

Section 304(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) provides for a 15-day comment period for these types of fishery rules. NMFS finds “good cause” under the Administrative Procedure Act that a longer notice and comment period would be unnecessary and contrary to

the public interest. 5 U.S.C. 553(b)(B). Specifically, NMFS issued a temporary rule closing the high seas and U.S. EEZ between the latitudes of 20° N and 20° S in the WCPFC Area to purse seine fishing from October 9, 2019, through the end of the calendar year (84 FR 52035; October 1, 2019), due to reaching the 2019 fishing effort limit specified by the WCPFC and implemented by NMFS at 50 CFR 200.223(a). Thus, U.S. purse seine vessels are currently unable to fish on the high seas in the overlap area. Once the regulatory changes in this proposed rule go into effect, that fishery closure would no longer apply. Providing more than a 15-day comment period on this proposed rule would unnecessarily lengthen the U.S. purse seine fishery closure in the overlap area, and thus, NMFS finds good cause to provide the public with a 15-day comment period on this proposed rule.

Coastal Zone Management Act (CZMA)

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the State of Hawaii. NMFS submitted determinations to Hawaii and each of the Territories on February 7, 2019, for review by the responsible state and territorial agencies under section 307 of the CZMA. The CNMI replied by letter dated March 7, 2019, stating that based on the information provided, it has determined that the action will be undertaken in a manner that is consistent to the maximum extent practicable with the enforceable policies of the CNMI's coastal management program. Hawaii replied by letter dated February 15, 2019, stating that, because the overlap area is outside of the jurisdiction of the Hawaii Coastal Zone Management Program's enforceable policies, it would not be responding to the consistency determination. No responses were received from Guam or American Samoa, and thus, concurrence with the respective consistency determinations is presumed (15 CFR 930.41).

Executive Order 12866

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.

Regulatory Flexibility Act (RFA)

An IRFA was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered as well as its objectives, and the legal basis for this action are contained in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. The analysis follows:

Estimated Number of Small Entities Affected

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (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.

The proposed rule would apply to owners and operators of U.S. commercial fishing vessels used to fish for HMS in the overlap area, including longline vessels, albacore troll vessels, and purse seine vessels. The number of such vessels is the number authorized to fish in both the IATTC Area and WCPFC Area. The numbers as of October 2, 2019, as reflected on the IATTC Vessel Register and the WCPFC Record of Fishing Vessels, were 143 longline vessels, 24 albacore troll vessels, and 16 purse seine vessels.

Based on limited financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all of the affected longline and albacore troll fishing entities, and almost 85% 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. Within the purse seine fleet, analysis of the average revenue, by vessel, for the three years of 2016–2018 (most recent data available) reveals that average annual revenue among vessels in the fleet was about \$9.0 million, and the three-year annual averages were less than the \$11 million threshold for 13 of the 16 vessels on both the RVR and RFV.

Recordkeeping, Reporting, and Other Compliance Requirements

The reporting, recordkeeping and other compliance requirements of this proposed rule are described earlier in the preamble. The classes of small entities subject to the proposed requirements and the expected costs of complying with the proposed requirements are described in this proposed rule.

As described in the Paperwork Reduction Act subsection, although there are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act, existing collection-of-information requirements would apply in the overlap area, under the following Control Numbers: (1) 0648–148, West Coast Region Pacific Tuna Fisheries Logbook and Fish Aggregating Device Data Collection; (2) 0648–0649, Transshipment Requirements under the WCPFC; (3) 0648–0218, South Pacific Tuna Act; (4) 0648–0595, WCPFC Vessel Information Family of Forms; and (5) 0648–0204, West Coast Region Family of Forms.

Fulfillment of the requirements under the proposed rule is not expected to require any professional skills that affected vessel owners and operators do not already possess.

For longline fishing entities, although as previously described there are about 145 such entities that are authorized to be used for fishing in the overlap area, there has been very little fishing activity in the overlap area (and no longline fishing activity at all since 2010), and NMFS has not identified any factors affecting the longline fishing status quo. Consequently, NMFS expects the proposed action to have little or no effect in terms of recordkeeping, reporting, or other compliance requirements for affected longline fishing entities.

For albacore troll fishing entities, NMFS does expect fishing activity in the overlap area, so affected troll fishing entities could experience effects from the proposed rule. Under the proposed rule, two substantive sets of requirements that implement conservation and management measures for HMS would be newly applied to the overlap area: The regulations to implement IATTC conservation and management measures that restrict fishing in proximity to data buoys (50 CFR 300.25(f)), and the regulations to implement IATTC conservation and management measures prohibiting the retention of mobulid rays (with limited exceptions) and requiring that they be handled and released in specified

manners (50 CFR 300.27(i)–(j)). The new data buoy requirements could increase operating costs by increasing the time spent at sea in the overlap area. For example, the vessel operator and crew would have to avoid interactions with data buoys, and if the vessel or gear becomes entangled with a data buoy they would need to make sure to disentangle the gear carefully, to cause as little damage to the data buoys as possible. As NMFS found in the analysis in support of the 2011 rulemaking establishing these requirements throughout the IATTC Area, NMFS expects interactions with data buoys to be rare (76 FR 68332; November 4, 2011). Moreover, data from the National Data Buoy Center (NDBC) indicates that only one anchored data buoy is located in the overlap area. Since interactions with data buoys would be unlikely to occur in the overlap area, the compliance costs are expected to be minor or nil. NMFS does not expect the mobulid ray requirements to lead to any compliance costs for albacore troll fishing vessels, because there is very little bycatch in albacore troll fisheries (81 FR 50401; August 1, 2016).

Some of the regulations implementing WCPFC conservation and management measures (at 50 CFR part 300, subpart O) would no longer apply in the overlap area, but they would be replaced with comparable regulations implementing IATTC conservation and management measures (at 50 CFR part 300, subpart C) that will now apply in this area. Specifically, the IATTC prohibition against retaining oceanic whitetip shark, implemented by 50 CFR 300.27(d)), would now apply in the overlap area. The requirements under the regulations implementing WCPFC decisions and IATTC decisions are similar, and NMFS does not expect any substantive change in compliance costs. There would also be new requirements that apply in the overlap area for albacore troll fishing entities under regulations implementing IATTC decisions for MCS measures, including logbook reporting requirements (50 CFR 300.22(a)(1)) and VMS requirements (50 CFR 300.26). However, because the affected albacore troll fishing entities are already required to comply with the requirements regarding the IATTC RVR and to comply with the logbook reporting and VMS requirements when fishing in the IATTC Area, the addition of the regulations that implement IATTC decisions would not require substantial changes in practices and would not be expected to bring any change in compliance costs.

For the purse seine fishing entities, the removal of several regulations that

implement WCPFC conservation and management measures from the overlap area would be expected to reduce compliance costs, but those reductions would be somewhat offset by compliance costs associated with the imposition of similar regulations to implement IATTC conservation and management measures in the overlap area. The regulations that would be removed from the overlap area are the annual limits on purse seine fishing effort and the seasonal prohibitions on setting on FADs (50 CFR 300.223(b)). The regulations that would be applied are the seasonal closures on purse seine fishing and purse seine FAD restrictions (50 CFR 300.28). The respective purse seine measures of IATTC and WCPFC are not directly comparable, and NMFS cannot predict their respective potential compliance costs with any precision. Accordingly, only a qualitative comparison of their respective compliance costs is possible. The measures as they would apply on the high seas are what matter for this analysis, since no portion of the U.S. EEZ is within the overlap area, and no U.S. commercial HMS fishing vessels have had a history of fishing in the foreign EEZs in the overlap area. If the IATTC measures were applied in the overlap area in this proposed rule, U.S. purse seine fishing entities would be subject to one of the IATTC's two 72-day prohibitions on purse seine fishing (50 CFR 300.25(e)) in the overlap area each year. If instead the WCPFC measures applied in the overlap area, U.S. purse seine fishing entities would be allowed, collectively, to spend 1,270 fishing days on the high seas in the WCPFC Area each year, with fishing days spent in the overlap area counting against that limit, and they would be subject to 5-month prohibitions on fishing on FADs in the overlap area each year (50 CFR 300.223). Although, the two sets of measures are not directly comparable, the IATTC measures would provide greater fishing opportunities to most or all affected purse seine fishing entities than those of WCPFC, because the IATTC purse seine closure period is shorter than the purse seine closures that have been in effect on the high seas in the WCPO due to the purse seine fishing effort limits specified by the WCPFC (in 2015, closure from June 15 through December 31, 2015; in 2016, closure from September 2 through December 31, 2016; in 2018, closure from September 18 through December 31, 2018; in 2019, closure from October 9 through December 31, 2019) or the WCPFC FAD prohibition periods. Further, the vessels operating under

IATTC measures have greater operational certainty (affording logistical and maintenance predictability) because the vessel owner chooses between one of two closure periods rather than being subject to a variable closure date under WCPFC measures. It is not possible to predict the degree to which those opportunities would be taken advantage of, but the greater opportunities and the flexibility they provide indicate that application of IATTC measures in the overlap area would likely reduce compliance costs for the directly affected purse seine fishing entities.

Purse seine fishing entities authorized to fish in the WCPFC Area but not in the overlap area would not be directly affected by the proposed rule, but they could be indirectly affected. The fishing effort limits set forth in WCPFC conservation and management measures would no longer apply in the overlap area, allowing greater fishing effort in the overlap area. Additionally, under the proposed rule, fishing effort in the overlap area would not be counted against WCPFC limits, potentially increasing fishing opportunities for the U.S. purse seine fleet outside the overlap area. This is based on trends in recent years showing increased U.S. purse seine fishing activity in the overlap area. If all of the fishing days in the overlap area no longer count towards the WCPFC-specified fishing effort limits, it is likely that more fishing days would be available to U.S. purse seine vessels on the high seas in the WCPFC Area outside of the overlap area.

In addition to the changes to the purse seine-specific regulations just described, several substantive requirements would apply to purse seine fishing entities in the overlap area under the proposed rule that do not currently apply in that area: The regulations implementing IATTC conservation and management measures on FADs (50 CFR 300.28), the Pacific bluefin tuna catch limit (50 CFR 300.25(g)), restrictions on fishing in proximity to data buoys (50 CFR 300.25(f)), requirements to release non-tuna species (50 CFR 300.27), requirements to release mobulid rays (with limited exceptions) and release them in specified manners (50 CFR 300.27(i)–(j)), and requirements to release sharks and handle them in specified manners (50 CFR 300.27(k)), as explained in more detail below.

The FAD management measures include FAD identification regulations that would require that deployed FADs be physically marked with unique identifiers, as well as limits on the number of active FADs, restrictions on

FAD deployments and removals, and FAD design regulations, which would require that all FADs on board or deployed meet certain specifications, particularly with respect to the use of netting. As mentioned above, U.S. purse seine vessels fishing in the overlap area are currently required to comply with the regulations for inclusion on the IATTC RVR. Thus, although this proposed rule would change the area of application of the FAD management regulations at 50 CFR 300.28, all of the affected vessels are currently complying with those regulations when fishing in the EPO. Data from 2014–2018 shows that all current U.S. purse seine vessels that fished in the overlap area also fished in the EPO. For affected entities, the change in area of application of the FAD management regulations probably would only bring a minor increase in costs or no increased costs, as they are already complying with those regulations when fishing in the EPO outside the overlap area. Moreover, there are comparable limits for the number of active FADs currently applicable in the overlap area under the regulations implementing WCPFC decisions at 50 CFR 300.223(b).

The Pacific bluefin tuna catch limit that would go into effect in the overlap area under the proposed rule would not be expected to bring compliance costs to the large U.S. purse seine vessels that fish in the overlap area, as these vessels generally do not target or catch Pacific bluefin tuna.

The data buoy requirements could increase operating costs by increasing the time spent at sea for a given amount of fishing. For example, vessels would not be able to fish within one nautical mile of an anchored data buoy, they would have to avoid interactions with data buoys, and if the vessel or gears becomes entangled with a data buoy, the operator and crew would need to make sure to disentangle the gear carefully to cause as little damage to the data buoys as possible. As NMFS found in the 2011 rulemaking that established these requirements throughout the IATTC Area, NMFS expects interactions with data buoys to be rare (76 FR 68332; November 4, 2011). Moreover, there is a low number of data buoys located in the overlap area. Based on data from the NDBC, only one anchored data buoy is located in the overlap area. Thus, interactions with data buoys would be even more unlikely to occur, so the compliance costs are expected to be minor.

The requirements to release non-tuna species, mobulid rays, and sharks are not expected to substantially affect business revenues, because none of the

affected fishing entities target non-tuna species, sharks, or rays. However, the requirements could lead to increased time spent by vessel operators and crew handling and releasing incidentally caught non-tuna species, sharks, and rays in the specified manner, and so could bring modest compliance costs. In addition, these requirements could detrimentally affect revenues if targeted tuna are incidentally released when these species are intentionally released from the brailer to comply with the regulations. However, affected U.S. purse seine vessel owners and operators are already subject to these requirements when fishing in the IATTC Area, and thus the small change in the area of application of these requirements would not be expected to substantially increase compliance costs.

Some regulations implementing WCPFC conservation and management measures for HMS (at 50 CFR part 300, subpart O) would no longer apply in the overlap area. However, comparable regulations that implement IATTC conservation and management measures for HMS (at 50 CFR part 300, subpart C) would now apply in the overlap area. Regulations that would shift in this manner include requirements to retain all catch of bigeye tuna, skipjack tuna, and yellowfin tuna (50 CFR 300.27(a)), not to retain oceanic whitetip shark (50 CFR 300.27(d)), and not to retain silky shark (50 CFR 300.27(e)); requirements regarding sea turtle handling and release (50 CFR 300.27(c)); whale shark restrictions (50 CFR 300.27(g)–(h)); and whale shark encirclement reporting requirements (50 CFR 300.22(a)(2)). For these requirements, the two sets of regulations are similar, and NMFS does not expect any substantive change in compliance costs.

There would also be five requirements for purse seine fishing entities under the regulations implementing IATTC conservation and management measures that would go into effect under the proposed rule. These requirements include reporting on FAD interactions (50 CFR 300.22(a)(3)(i)), reporting on active FADs (50 CFR 300.22(a)(3)(ii)), logbook reporting requirements (50 CFR 300.22(a)(1)), transshipment requirements (50 CFR 300.25(c)), and VMS requirements (50 CFR 300.26). The first two requirements (reporting on FAD interactions and reporting on active FADs) would bring substantive new requirements. Regarding the requirement for reporting on FAD interactions, as NMFS found in the 2016 rulemaking that established the requirement throughout the IATTC Area (excepting the overlap area), NMFS expects a minimal additional time

burden for owners and operators of large purse seine vessels to record the specified information for FAD interactions activities, and expects minor impacts on business incomes (81 FR 86966; December 2, 2016). Regarding reporting on active FADs, as NMFS found in the 2018 rulemaking establishing the requirement throughout the IATTC Area (excepting the overlap area), NMFS does not expect any increase in compliance costs, because it is likely that vessel operators are already collecting the necessary information (83 FR 15503; April 11, 2018). The latter three requirements (logbook reporting requirements, transshipment requirements, and VMS requirements), are not expected to bring any new compliance costs, because the affected purse seine fishing entities are currently subject to those regulations when fishing in the IATTC Area outside of the overlap area, and the addition of these regulations in the overlap area would not require substantial changes in practices. Moreover, the regulations implementing the IATTC prohibition on at-sea transshipments for purse seine vessels is essentially identical to regulations already in effect in the overlap area implementing the WCPF Convention and WCPFC decisions. Similarly, the regulations implementing the IATTC VMS provisions are essentially identical to regulations already in effect in the overlap area implementing the WCPF Convention and WCPFC decisions, but would just apply to a smaller group of vessels—vessels 24 meters or more in overall length. Given that the requirements implementing the WCPF Convention and WCPFC decisions already apply and would continue to apply under the proposed rule to vessels of all sizes, there would be no new VMS requirements under the proposed rule, and all U.S. commercial fishing vessels fishing for HMS in the overlap area would still be required to continuously operate the VMS at all times, with certain exceptions.

In summary, this proposed rule would be expected to have little or no effect on the compliance costs of any affected entities, except purse seine fishing entities. For purse seine fishing entities, this rule would bring modest increases in compliance costs associated with several requirements that would go into effect in the overlap area. However, these costs would be counteracted by a potentially substantial reduction in compliance costs associated with removal of the regulations to implement WCPFC conservation and management measures for fishing effort limits and

FAD prohibition periods from application in the overlap area.

Disproportionate Impacts

NMFS does not expect any disproportionate economic impacts between small and large entities operating vessels resulting from this rule. Furthermore, NMFS does not expect any disproportionate economic impacts based on vessel size, gear, or homeport.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that conflict with the proposed regulations. NMFS has identified several Federal regulations that duplicate or overlap with the proposed regulations. These include: The proposed logbook reporting requirements at 50 CFR 300.22(a)(1), which overlap with existing regulations at 50 CFR 300.34(b)(1) and 300.218(a), the proposed transshipment requirements at 50 CFR 300.25(c), which overlap with existing regulations at 50 CFR 300.216(b), and the proposed VMS regulations at 50 CFR 300.26, which overlap with existing regulations at 50 CFR 300.45 and 300.219. However, as described above, these regulations impose requirements which are substantially similar to, or in some cases identical to, requirements imposed under regulations currently applicable in the overlap area. Thus, application of these overlapping requirements is not expected to create significant economic burdens on vessel owners and operators.

Alternatives to the Proposed Rule

NMFS has sought to identify alternatives that would minimize the proposed rule's economic impacts on small entities ("significant alternatives"). For most affected entities, the proposed action is likely to have no economic impact or a positive economic impact compared to the no-action alternative. NMFS also considered the alternative of removing application from the overlap area of all regulations derived from WCPFC conservation and management measures and from the WCPF Convention. This alternative would likely result in lower compliance costs than the proposed action for some affected entities, but it would not be consistent with U.S. obligations under the WCPF Convention, since the decisions of the IATTC and WCPFC regarding the overlap area cannot alter existing obligations under the WCPF Convention. Therefore, NMFS does not prefer this alternative.

Paperwork Reduction Act

Although there are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act, existing collection of information requirements would apply in the overlap area, under the following Control Numbers: (1) 0648-0148, West Coast Region Pacific Tuna Fisheries Logbook and Fish Aggregating Device Data Collection; (2) 0648-0649, Transshipment Requirements under the WCPFC; (3) 0648-0218, South Pacific Tuna Act; (4) 0648-0595, WCPFC Vessel Information Family of Forms; and (5) 0648-0204, West Coast Region Family of Forms.

List of Subjects in 50 CFR Part 300

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

Dated: November 4, 2019.

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 proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

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

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

■ 2. In § 300.21, revise the definition of "Convention Area or IATTC Convention Area" to read as follows:

§ 300.21 Definitions

* * * * *
Convention Area or IATTC Convention Area means: All waters of the Pacific Ocean within the area bounded by the west coast of the Americas and by 50° N latitude from the coast of North America to its intersection with 150° W longitude, then 150° W longitude to its intersection with 50° S latitude, and then 50° S latitude to its intersection with the coast of South America.
* * * * *

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

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

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

■ 4. In § 300.211, add a definition of "Overlap Area" in alphabetical order to read as follows:

§ 300.211 Definitions

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Overlap Area means the area of overlap of the IATTC area of competence of the commission and the Convention Area, as described by all waters of the Pacific Ocean in the area bounded by 50° S latitude, 4° S latitude, 150° W longitude, and 130° W longitude.
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■ 5. In § 300.218, revise paragraph (h) to read as follows:

§ 300.218 Reporting and recordkeeping requirements.

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(h) *Whale shark encirclement reports.* The owner and operator of a fishing vessel of the United States used for commercial fishing in the Convention Area that encircles a whale shark (*Rhincodon typus*) with a purse seine in the Convention Area shall ensure that the incident is recorded by the end of the day on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator. This paragraph does not apply in the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or in the Overlap Area.

■ 6. In § 300.223, revise the introductory text 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. Except as required in subsection (e) below, none of the requirements of this section apply in the Overlap Area. 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.
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■ 7. In § 300.224, add introductory text to read as follows:

§ 300.224 Longline fishing restrictions.

None of the requirements of this section apply in the Overlap Area.
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■ 8. In § 300.226, add introductory text to read as follows:

§ 300.226 Oceanic whitetip shark and silky shark.

None of the requirements of this section apply in the Overlap Area.

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