

NATIONAL MARINE FISHERIES SERVICE REPORT ON
HIGHLY MIGRATORY SPECIES MANAGEMENT

National Marine Fisheries Service (NMFS) Southwest Region will briefly report on recent international and domestic developments relevant to highly migratory species (HMS) fisheries and issues of interest to the Council. NMFS Southwest Fisheries Science Center will briefly report on HMS-related science and research activities.

Reference material for this agenda item include the NMFS report (Attachment 1), a NMFS letter detailing issuance of a transshipment permit (Attachment 2), a Western Pacific Fishery Management Council (WPFMC) letter about Inter-American Tropical Tuna Commission (IATTC) related activities (Attachment 3), and two public comment letters pertaining to international matters related to the albacore fishery (Agendum H.1.d, Public Comment).

Council Task:

Discussion.

Reference Materials:

1. Agendum H.1, Attachment 1: NMFS Report on Highly Migratory Species Management.
2. Agendum H.1, Attachment 2: Transshipment Permit Approval Letter.
3. Agendum H.1, Attachment 3: WPFMC IATTC Letter.
4. Agendum H.1.d, Public Comment.

Agenda Order:

- a. Regulatory Activities
- b. Science Center Activities
- c. Reports and Comments of Advisory Bodies
- d. Public Comment
- e. Council Discussion

Svein Fougner
Gary Sakagawa

PFMC
08/25/04

International Activities

U.S. - Canada Albacore Treaty - NOAA Fisheries implemented final regulations effective June 1, 2004, to ensure that the U.S. could carry out its obligations under the amended U.S.- Canada Albacore Treaty, including the effort reduction program the next 3 years. The regulations require (among other things) that U.S. and Canadian vessel operators call in to a third party contractor prior to crossing the border to fish in the other Party's zone and prior to exiting those waters. The contractor provides a confirmation number to the caller, and the data are immediately posted on a website (access controlled) that U.S. and Canadian fishery officials can check to monitor fishing patterns during the season. If and when a Party finds that its fishery effort limit is being approached, it will notify its fleet and advise that further crossings to fish under the Treaty would be prohibited on a date certain. The crossing reports also will provide a solid basis for checking to ensure that relevant vessels have submitted logbooks covering their fishing. This is the first year of real monitoring of fishing in each others waters, but early reports indicate that the reporting system is working well. The SWR sent letters directly to over 1,000 troll fishing vessel owners earlier this year advising them of the new requirements. It appears that there have been few if any problems with performance of the contractor: we have not received any complaints to date. A complicating factor this year, however, was that Canadian vessels were faced with new requirements under the Trade Act of 2003. The U.S. Customs and Border Service imposed additional pre-port-call reporting and bonding requirements, and NMFS went to great efforts to ensure that Canadian fishery officials and fishermen would have complete and up-to-date information about these new requirements. We received excellent cooperation both from port managers and industry, as well as from the Customs and Border Service. However, we are aware that a number of Canadian fishermen had difficulties. We hope to minimize any such problems next year.

IATTC - The Inter-American Tropical Tuna Commission (IATTC) met June 24-27, 2004, in Lima, Peru. The United States was represented by all four U.S. Commissioners or Commissioners designate. The most significant action taken was adoption of a revised, multi-year conservation and management program for the tuna fisheries. What had been slated as a 6-week purse seine closure in the summer of 2004 was changed to be a 6-week closure with two potential time frames (summer and end-of-year); each Party would choose the time period in which purse seine fishing by its vessels would be prohibited. The measure also calls for 6-week purse seine closures in 2005 and 2006. Longline fishing would also be controlled in 2004-2006, with specific tonnage limits of bigeye tuna for some nations and with other nations (including the U.S.) to hold their longline catches to the levels reached in 2001. Other actions agreed to include: calling on each nation that has vessels fishing for species for which the Commission has established conservation and management measures to establish a VMS program, except that a nation that has such a program is not required to establish a new one; continuing its bycatch reduction program for juvenile tuna through 2006; and adopting a program to promote

research, gear development, and outreach to promote new and additional efforts to mitigate the impact of tuna fishing on sea turtles. Finally, it was reported that 10 current IATTC member nations have signed the new IATTC Convention (called the Antigua Convention) but none have yet deposited instruments of ratification. Therefore, the Antigua Convention has not yet gone into effect.

In this context, it should be noted that the IATTC recommendation to limit longline catches of bigeye tuna in the eastern Pacific is likely to affect fishing vessels both from the West Coast and in the central and western Pacific (especially Hawaii longliners). The SWR and Pacific Islands Region (and our respective science centers) are working together to ensure that the best available data are used to establish the U.S. catch limit.

Western and Central Pacific Fisheries Commission - The convention for the central and western Pacific commission has entered into force. However, the first plenary session has not yet been held and no specific conservation and management measures have been recommended for implementation. There was a recent meeting in the region focusing on the need to control fleet capacity, and especially purse seine capacity, and some recommendations were made to impose limits, although there was not unanimity on the importance of this action. There also is apparently some difference in view as to whether the commission is to focus on high seas fishery management to complement management of individual nations' exclusive economic zones or is to focus on the management of fisheries in all areas of the species' range. It is clear, however, that this commission and the IATTC will have to expand cooperation to deal with conservation of bigeye tuna and other species that clearly travel across the boundaries of both organizations' areas of competence. Representatives of each organization have attended meetings of the other organization but formal collaborative mechanisms and processes are not yet in place.

Meanwhile, the Standing Committee on Tuna and Billfish (SCTB, a regional scientific organization) met in August to review and discuss the condition of central and western Pacific stocks. This has implications for U.S. vessels as bigeye tuna is one of the principal stocks of concern and it has not yet been determined if bigeye are one stock or two stocks in the Pacific. In either case, however, the stock has been under heavy fishing pressure and there is a possibility that overfishing is occurring. The SCTB meeting may result in a better understanding of the situation. Results of the meeting will be reported to the Council in September.

Domestic Fisheries: FMP Implementation

The Southwest Region and Center continue preparations for full implementation of the HMS FMP. Permits, logbooks and vessel marking requirements, however, cannot be implemented until Paperwork Reduction Act clearances have been received. Due to personnel and process changes, these clearances have been delayed. Nonetheless, clearances should be received well in advance of the new year, so that the requirements will go into effect in January 2005. The SWR hopes to work with States to develop means by which information about these requirements can be distributed through licensing offices as well as the SWR web site, the Council home page, and other means. The SWR also plans a major mailing to owners of vessels with a known history of involvement in HMS fisheries to inform them of the requirements, including distribution of permit application forms that have been completed to the extent practicable with available information.

Meanwhile, with the help of a contractor, the Region and Center will soon have completed initial design and costing out of observer programs consistent with the FMP mandate. The focus has been on longline, troll albacore, charter/CPFV, and coastal purse seine gears. Through recent (and new) observer placements on coastal purse seine vessels targeting coastal pelagic species, the SWR also has obtained practical information that will be vital to development of good data recording forms for observers. Also, the SWC has been focusing on refinement and printing of logbooks that will be distributed to fishers after the PRA clearance is received.

The SWR also is taking actions as called for in the Biological Opinion from the U.S. Fish and Wildlife Service. Among these actions is to refine, reproduce and distribute informational materials about the handling and release of any pelicans taken incidental to recreational fishing for HMS. While it is acknowledged by the FWS that HMS fishing almost certainly occurs primarily far from breeding colonies and foraging areas for pelicans, there may be occasional interactions, and given the status of pelicans under the Endangered Species Act, it is important to initiate observer placements to ensure that we have good information on this topic. The SWR had previously prepared informational materials, so updating and refinement is not a major new task.

Finally, the SWR is coordinating with the Pacific Islands Region to ensure consistent use and presentation of fishery and research information on stocks of shared interest (e.g., north Pacific albacore, swordfish, bigeye tuna) in NMFS publications and reports. This is especially important for species which are fully utilized or may be subject to overfishing. In such cases, there will be a need not only for NMFS coordination but for coordination between the Pacific and Western Pacific fishery management councils on such issues.

Agendum H.1
Attachment 2
September 2004



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

Mr. Benjamin Fuss
Baja Aqua-Farms
2535 Kettner Boulevard
San Diego, California 92101

JUN 30 2004

RECEIVED

JUL 06 2004

PFMC

Dear Mr. Fuss:


I have reviewed your application for a permit to be issued under Section 204(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and made the following determinations:

- 1) The transportation of fish to be conducted under the permit will be in the interest of the United States and will meet the applicable requirements of the Magnuson-Stevens Act.
- 2) You have confirmed that you will comply with the requirements described in Section 201(c)(2) of the Magnuson-Stevens Act.
- 3) No bonds or financial assurances as provided for in Section 204(d)(3)(C) of the Magnuson-Stevens Act are necessary at this time.
- 4) No owner or operator of a vessel of the United States having adequate capacity to perform the transportation for which the application was submitted has indicated an interest in performing the transportation.

Accordingly, I have approved the application. Enclosed is a permit issued under Section 204(d) of the Magnuson-Stevens Act for the THOR and the XCARET. This permit governs fishing by the named vessels in calendar year 2004. It includes the initial permit conditions and restrictions. Additional conditions and restrictions may be issued, if appropriate.

Copies of the approved permit are being provided to the Southwest Regional Administrator of the National Marine Fisheries Service, the U.S. Coast Guard, the Pacific Fishery Management Council, and the Department of State.

Sincerely,


for William T. Hogarth, Ph.D.

Enclosure



MX-001

UNITED STATES OF AMERICA
 DEPARTMENT OF COMMERCE
 NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION


FOREIGN FISHING VESSEL PERMIT
 FOR CALENDAR YEAR 2004

| VESSEL NUMBER | NAME OF VESSEL | CALL SIGN | ACTIVITY |
|------------------|----------------|--------------|----------|
| MX-04-0006 | THOR | XCCH6 | 10 |
| MX-04-0007 | KCARET | XCDJ7 | 10 |

ACTIVITY : 10 -- TRANSSHIPPING [REFER TO 50 CFR 600.501(c)]

THE VESSELS IDENTIFIED ABOVE ARE SUBJECT TO THE ATTACHED CONDITIONS
 AND RESTRICTIONS AND TO ANY SUBSEQUENT CONDITIONS AND RESTRICTIONS
 WHICH MAY BE ISSUED AND MADE A PART OF THIS FOREIGN FISHING PERMIT.

FOR THE UNITED STATES OF AMERICA


 WILLIAM T. HECARTH, Ph.D.
 ASSISTANT ADMINISTRATOR
 FOR FISHERIES

6/30/04
 DATE

AUTHORIZATION NO. MX-001

ATTACHMENT FOR MX-001

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATIONFOREIGN FISHING VESSEL PERMIT
AUTHORIZED ACTIVITIES AND
CONDITIONS AND RESTRICTIONS

AUTHORIZED ACTIVITIES ARE AS FOLLOWS:

The named vessels are authorized to transship, within the area of the U.S. Exclusive Economic Zone south of 38° N. lat., live tuna for the purpose of transporting the tuna alive in a fish cage to the Mexican Exclusive Economic Zone.

CONDITIONS AND RESTRICTIONS ARE AS FOLLOWS:

In addition to the conditions and restrictions established by Section 204(b)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) (16 U.S.C. 1801 et seq.), the named vessels are subject to the following conditions and restrictions:

Fishing must be conducted in accordance with the provisions of Section 204(d) of the MSFCMA, applicable Federal and State regulations, and any additional conditions and restrictions which may be issued and made a part of this permit. Any area closed to fishing by U.S. vessels being supported by the named vessels is also closed to the named vessels.

This permit is valid from the date of signature for calendar year 2004 unless otherwise limited in this permit or subsequent conditions and restrictions issued and made a part of this permit. Subsequent conditions and restrictions, if any, are valid on the date issued. This permit may be amended, suspended, canceled or revoked under provisions of 15 CFR Part 904.

Vessels authorized under this permit may engage in approved fishing activities only after:

- (1) the permitted vessel has received notification of activities authorized under this permit, and of all additional conditions and restrictions pertaining to this permit and
- (2) a copy of this permit is on board and readily available to an authorized officer or observer upon request.

The owners and operators of the vessels authorized under this permit must ensure that fish used to feed the caged tuna are

disease-free and caught from the area where the tuna were caught.

In lieu of a transshipment point and other particulars being specified in the permit application for the named vessels, this permit is issued contingent upon the owner or operators of the named vessels providing information satisfactory to the Southwest Regional Administrator, National Marine Fisheries Service (Regional Administrator), and to District Eleven of the U.S. Coast Guard (USCG), specifying the quantities of tuna transported from U.S. waters by the named vessels, and such other information as the Regional Administrator and USCG may deem necessary. Failure by the owner or operators of the named vessels to submit complete and accurate information to the satisfaction of the Regional Administrator and USCG may result in cancellation of the permit. The manner and schedule for reporting such information is set as follows by the Regional Administrator and USCG:

The owners and/or operators of the named vessels must report for each transshipment the following information on a weekly basis by the Tuesday following the week in which transshipments occurred:

- a) Date of transshipment;
- b) U.S. catcher vessel name and hull number;
- c) Tuna species transshipped;
- d) Volume of tuna transshipped in metric tons (mt);
- e) Value of tuna transshipped in U.S. dollars per mt;
- f) Transshipment point specified as latitude and longitude;
- g) Name and address of company to which transshipped tuna is to be delivered.

The above information must be submitted by U.S. mail, electronic mail or fax to Trisha Culver at the following address:

National Marine Fisheries Service
Southwest Regional Office
P.O. Box 32469
Long Beach, CA 90832-2469
E-mail: Trisha.Culver@noaa.gov
Fax: (562) 920-4047

The owners and/or operators of the named vessels must report as follows to Coast Guard Activities, San Diego, CA, either via VHF-FM Channel 16 or via telephone to (619) 683-6470:

- a) Prior to entering U.S. waters, but no earlier than 4 hours before entry, report time and place of entry and expected time and place of departure from U.S. waters;
- b) If delayed within U.S. waters for more than 24 hours past the estimated time of departure, report current position and new estimated departure time;
- c) If contacted by the USCG.

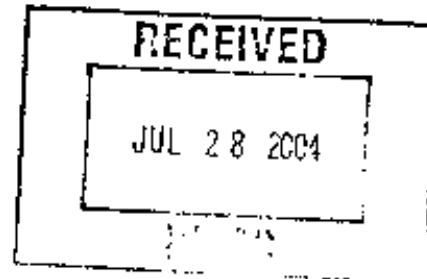


WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL

Agendum H.1
Attachment 3
September 2004

July 9, 2004

Rod McInnis
Acting Administrator
NMFS Southwest Region
501 West Ocean Blvd
Suite 4200
Long Beach
CA 90802



Dear Rod:

Please accept these comments on the June 25th proposed rule to implement the 2004 management measures to prevent overfishing of the eastern tropical Pacific Ocean (ETP) tuna stocks, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC). However, it is the Council's position that the domestic implementation of such actions should be carried out through the Council process. This process provides a series of opportunities for fishery managers, participants and other stakeholders to assist in crafting implementing regulations that are consistent with existing fishery management plans, carefully consider any allocation issues, and are fully cognizant of local conditions.

In general, the Council is in favor of international actions to limit catches of bigeye tuna, as we are aware that the stocks, while not overfished per se, are probably being fished at a mortality rate greater than that associated with MSY.

The rule proposes limiting bigeye catches by US longliners in the convention area to 100 mt. We are concerned that 100 mt is an unrealistic total for the Hawaii fishery, particularly if there continues to be some longline fishing based out California. We would like to know if logbook data does indeed indicate that the 2001 landings for the Hawaii fishery amounts to only 100 mt. Perusal of data in the Pacific Council's highly migratory species fishery management plan indicates that in 1998 and 1999 bigeye catches by Hawaii based longliners in the convention area were about 150 mt. We are following up on this with an inquiry to the Pacific Islands Fisheries Science Center on the annual volume of catch of bigeye by the Hawaii fleet in the convention area. We will communicate the results of this inquiry in a follow up letter next week which we expect to be taken into consideration when the final rule is being drafted.

The tone of the proposed rule suggests that the rule will have little impact as Hawaii-based longliners are not thought to operate widely in the convention area. However, this may be incorrect and in addition, the Hawaii-based longline swordfish fishery has recently re-opened, which is the segment of the longline industry in Hawaii that is most likely to fish in the convention area. For these reasons we question the conclusion that a regulatory flexibility analysis is not required. We also note that there is no mention of a National Environmental Policy Act analysis, which we believe is also required for this measure.

The resolution drafted by IATTC states that monthly longline catch reports must be provided to the IATTC Director if this rule is put into effect. Clearly this is necessary to monitor the running total of bigeye catch landed by US vessels in the convention area. However, the rule does not speak to this aspect of the management measure, nor indicate which region will take the lead in monitoring catches and making the report. Moreover, there is no discussion in the rule about the mechanism by which fishermen would be kept informed of the running total of bigeye catch through the year, what level of catch would trigger any action against continued fishing within the convention area, what this action would be, and how fishermen would be notified in advance any action? Again, working through the Council process can resolve these issues and lead to improved rule making.

Thank you for the opportunity to comment on this proposed rule.

Sincerely,



Kitty M. Simonds
Executive Director

cc: Bill Robinson
Bill Hogarth
Bill Gibbons-Ely
Sam Foote



**WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL**

July 19, 2004

Rod McInnis
Regional Administrator
NMFS Southwest Region
501 West Ocean Blvd, Suite 4200
Long Beach, CA 90802

Dear Rod,

This letter contains additional comments on the June 25th proposed rule to implement the 2004 management measures to prevent overfishing of the eastern tropical Pacific Ocean (ETP) tuna stocks, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC).

As referenced in my previous comments, we have received additional information from the Pacific Island Fisheries Science Center (PIFSC) on the volume of catches by US longliners within the IATTC convention area (east of 150 deg W). These data show that the selection of 2001 for the Hawaii as the target year for the IATTC resolution was unfortunate, since this year appears to have been the exception from the norm. The total annual US longline bigeye catch ranged from 106-216 mt/yr (average = 129 mt) in the IATTC convention area between 1999 and 2003 (see attached table). The lowest catch of 106 mt was taken in 2001. The contribution to this bigeye catch total from the Hawaii-based longline fleet over this period ranged from 57-133 mt (average = 162 mt), again with the lowest catch occurring in 2001.

The 100 mt bigeye cap in the proposed rule would be shared between the Hawaii-based longline fleet and those longliners still based in California. The Hawaii-based vessels have in the past caught on average about 80% of the US fleet annual bigeye total in the convention area. Based on this ratio, the Hawaii fleet can expect to catch only 80 mt or half of the expected average in recent years. Although a small fraction of the total longline bigeye catch in the IATTC area, the Council doubts that any of the other longline fleets will expect to have a 50% reduction of their bigeye catches in the convention area. Clearly there are sufficient grounds here for NMFS to reconsider a higher cap than the 100 mt in the proposed rule, and to provide sufficient justification for this to the IATTC.

You will recall that 2001 was the year that the management of the Hawaii longline fishery was in flux due to litigation between NMFS and various environmental organizations. As a result, fishing to the north, east and south of Hawaii was limited and the entire fishery was shut down completely for two weeks in March of that year. This litigation was not resolved until April 1, 2001, at which time the Hawaii-based longline fleet took an additional month or so to resume fishing. The biggest impact of the management changes in 2001 was on those vessels which fished to the north and east of the Hawaiian Islands. This led to a major catch reduction of the longline fleet as a whole between 2000 and 2001 (about 35%) with a concomitant reduced bigeye catch in the IATTC convention area.

Based on this information, the negative impacts on Hawaii vessels will not be negligible, as indicated in the June 25th notice. Hawaii longline vessels (which are small business entities) will likely be

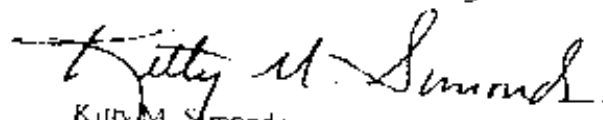
negatively affected by both the area closure and the quota. An Initial and Final Regulatory Flexibility Analysis (IRFA/FRFA) is required to present this information, analyze impacts, and discuss changes made to reduce these impacts. NMFS guidance on the preparation of these analyses should be followed. Similar guidelines exist for the documentation and certification necessary to waive the preparation of the IRFA/FRFA. However in general NMFS does not attempt certification as it is easier simply to conduct the IRFA/FRFA then to obtain certification. The summary presented in the proposed rule does not realistically discuss impacts on all small businesses (i.e. Hawaii and CA longline vessels) or the factors required for certification.

In addition, the rule's Regulatory Impact Review (RIR) should discuss net benefits to the nation, which it does not appear to do. It is also somewhat confusing that the document is entitled "RIR/IRFA" when the proposed rule states in one place that no IRFA was prepared, while in another place it says that it was prepared. If this is an IRFA, it does not address all the required factors (see NMFS' guidelines). In addition, the proposed rule does not appear to address National Environmental Policy Act requirements. With all the above impacts it would appear that an Environmental Impacts Statement, or at least an Environmental Assessment would be required. Further, the proposed rule does not contain any regulatory text, which compromises our ability to comment on what measures are being considered by NMFS in the event that the catch limit of bigeye is reached.

The Council would also like seek clarification about a statement on page 7 of the RIR/IRFA that the Tuna Conventions Act does not provide authority for the United States to take independent action to conserve and manage fisheries subject to management under the IATTC program. Does this imply that the provisions of this Council's pelagic fisheries management plan and those of the Pacific Council's pelagics plan do not apply to US vessels fishing within the IATTC convention area? Such a policy represents a significant change and should be discussed with the Councils in detail at the earliest opportunity.

Finally, the Council notes that the comment period (June 25-July 12) was extremely short, without justification for the brevity of the interval. We request that the comment period be re-opened. We would also like to reiterate that the domestic implementation of fishery management measures stemming from international treaties and conventions should be carried out through the Council process. Given the concerns about the status of Pacific pelagic stocks, it is likely that limits to fishing will become more common both in the IATTC area and in the central and western Pacific following the entry into force of a management convention in June this year. We all need to do a better job in the future of formulating coordinated science based, and well informed responses to these types of management issues.

Sincerely,


Kitty M. Simonds
Executive Director

cc Western Pacific Council Members
Hawaii Longline Association
Bill Hogan?

Catch of bigeye tuna in the IATTC convention area by US longline vessels, 1999-2003.
Source, NMFS Pacific Islands Fisheries Science Center, Honolulu

| Year | Bigeye catch (mt) | | Percent of bigeye catch by Hawaii longliners of total US longline catch in IATTC area |
|---------|---------------------------|------------------------|---|
| | Hawaii longliners only | Total US longliners | |
| 1999 | 165.82 | 216.61 | 76.55% |
| 2000 | 113.15 | 124.60 | 90.81% |
| 2001 | 51.65 | 105.78 | 48.82% |
| 2002 | 144.78 | 156.61 | 92.45% |
| 2003 | 171.17 | 206.80 | 82.77% |
| Average | 129.31 | 162.08 | 78.28% |

236.602-1 Selection criteria.

(a) Establish the evaluation criteria before making the public announcement required by FAR 5.205(c) and include the criteria and their relative order of importance in the announcement. Follow the procedures at PGF 236.602-3.

236.602-2 and 236.602-4 [Removed]

3. Sections 236.602-2 and 236.602-4 are removed.

4. Section 236.604 is amended by revising paragraph (c)(ii) to read as follows:

236.604 Performance evaluation.

(c) * * *

(ii) File and use the DD Form 2631, Performance Evaluation (Architect-Engineer), in a manner similar to the SF 330, Architect-Engineer Qualifications, Part II.

[FR Doc. 04-14341 Filed 6-24-04; 8:45 am]
BILLING CODE 5001-06-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 300**

[Docket No. 040617186-4186-01; I.D. 051704D]

RIN 0648-AS39

International Fisheries; Pacific Tuna Fisheries; Restrictions for 2004 Purse Seine and Longline Fisheries in the Eastern Tropical Pacific Ocean

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes this rule to implement the 2004 management measures to prevent overfishing of the eastern tropical Pacific Ocean (ETP) tuna stocks, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS) under the Tuna Conventions Act. The purse seine fishery for tuna in a portion of the Convention Area would be closed for a 6-week period beginning August 1, 2004. This proposed rule would also close the U.S. longline fishery in the IATTC Convention Area if the catch reaches the estimated level of 2001. This action is taken to limit fishing mortality

caused by purse seine fishing and longline fishing in the Convention Area and contribute to long-term conservation of the tuna stocks at levels that support healthy fisheries.

DATES: Comments must be received by July 12, 2004

ADDRESSES: Comments on the proposed rule should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802 or by email to the Southwest Region at 0648-AS39@noaa.gov. Comments may also be submitted by email through the Federal e-Rulemaking portal: <http://www.regulations.gov>. Include in the subject line of the e-mail comment the following document identifier: 0648-AS39. Comments also may be submitted by fax to (562) 980-4047. Copies of the regulatory impact review/regulatory analysis may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W Ocean Blvd., Long Beach, CA 90802-4213.

This Federal Register document is also accessible via the Internet at the Office of the Federal Register's website at <http://www.access.gpo.gov/su-docs/access/>.

FOR FURTHER INFORMATION CONTACT: J. Allison Rott, Sustainable Fisheries Division, Southwest Region, NMFS, (562) 980-4030.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949 (Convention). The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include the waters of the eastern tropical Pacific Ocean bounded by the coast of the Americas, the 40°N and 40°S parallels, and the 150°W meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. Under the Tuna Conventions Act, 16 U.S.C. 951-961 and 971 *et seq.*, NMFS must publish proposed rules to carry out IATTC recommendations that have been approved by DOS. The Southwest Regional Administrator, also is required

by rules at 50 CFR 300.29(b)(3) to issue a direct notice to the owners or agents of all U.S. purse seine vessels that operate in the ETP of actions recommended by the IATTC and approved by the DOS.

At an extraordinary meeting in October 2003, the IATTC adopted a resolution addressing yellow-fin, bigeye, and skipjack tuna conservation for 2003 and 2004. The resolution calls upon the Parties to the Convention and cooperating non-Parties to prohibit tuna purse seine fishing in a portion of the IATTC Convention Area for the month of December 2003 and for a 6-week period beginning August 1, 2004. The 2003 closure was implemented by separate action last year. The 2004 closure would be of waters bounded by a line from the point where the 95°W long. meridian intersects the west coast of the Americas, south to 10°N. lat., then west to 120°W. long., then south to 5°S. lat., then east to 100°W. long., then north to 5°N. lat., then east to 85°W. long., and then north to the point of intersection with the west coast of the Americas. This closure will target fishing that has higher catches of juvenile tuna. Therefore, there should be improved yields from the stocks later in the year. The resolution also calls upon Parties and cooperating non-Parties to take measures necessary to ensure that their total longline catches of bigeye tuna in the ETP during 2004 will not exceed those of 2001. The catch level for 2001 is estimated to be approximately 100 metric tons in the Convention Area. This is intended to prevent overfishing of the stock, which has declined in recent years while longline fishing effort has greatly expanded. The IATTC action at the extraordinary meeting in October 2003 came after considering a variety of measures, including the use of quotas and partial fishery closures as in 1999 through 2002 and the full month purse seine closure used in 2003. The selected measures should provide protection against overfishing of the stocks in a manner that is fair, equitable, and readily enforceable. The DOS has approved the IATTC recommendations.

The proposed 2004 time/area closure is based on 2003 assessments of the condition of the tuna stocks in the ETP and historic catch and effort data for different portions of the ETP, as well as records relating to implementation of quotas and closures in prior years. The closure is targeted to areas with high catches of bigeye tuna in the purse seine fishery and is believed by the IATTC scientific staff to be sufficient to reduce the risk of overfishing of that stock, especially when considered in

combination with the measures implemented in December 2003. The IATTC will meet in June 2004 and review new tuna stock assessments and fishery information and will consider that new information in evaluating the need for management measures for 2005 and future years.

The Acting Regional Administrator, Southwest Region, sent a notice October 10, 2003, to owners and agents of U.S. tuna purse seine fishing vessels of the actions that were recommended by the IATTC and have been approved by the DOS.

Classification

This action is proposed under the regulations for the Pacific Tuna Fisheries found at 50 CFR 200.29.

On December 8, 1999, NMFS prepared a biological opinion (BO) assessing the impacts of the fisheries as they would operate under the regulations (65 FR 47, January 3, 2000) implementing the International Dolphin Conservation Program Act (IDCPA) that amended the Marine Mammal Protection Act (MMPA). NMFS concluded that the fishing activities conducted under those regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This rule will not result in any changes in the fisheries such that there would be impacts beyond those considered in that BO. The IATTC has also taken action to reduce sea turtle injury and mortality from interactions in the purse seine fishery so impacts of the fisheries should be lower than in the past. Because this closure does not alter the scope of the fishery management regime analyzed in the IDCPA rule, or the scope of the impacts considered in that consultation, NMFS is relying on that analysis to conclude that this rule will not likely adversely effect any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. Therefore, NMFS has determined that additional consultation is not required for this action.

The U.S. ETP tuna purse seine fisheries occasionally interact with a variety of species of dolphin, and dolphin takes are authorized and managed under the IDCPA. These conservation management measures in this proposed rule do not affect the administration of that program, which is consistent with section 303(a)(2) of the MMPA.

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

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 as follows:

This action would prohibit the use of purse seine gear to harvest tuna in a portion of the Convention Area for a 6-week period beginning August 1, 2004, and limit the 2004 U.S. catch of bigeye tuna caught by longline in the ETP to the level reached in 2001 (approximately 100 metric tons). The proposed purse seine closure would apply to the U.S. tuna purse seine fleet, which consists of 10–20 small vessels (carrying capacity below 400 short tons (363 metric tons)) and 4–6 large vessels (carrying capacity 400 short tons (363 metric tons) or greater). The large vessels usually fish outside U.S. waters and deliver their catch to foreign ports or transship to processors outside the mainland United States. The large vessels are categorized as large business entities (revenues in excess of \$3.5 million per year). A large purse seine vessel typically generates 4,000 to 5,000 metric tons of tuna valued at between \$4 and \$5 million per year. The closure should not significantly affect their operations as they are capable of fishing in other areas that would remain open. The small vessels are categorized as small business entities (revenues below \$3.5 million per year). They fish out of California in the U.S. exclusive economic zone (EEZ) most of the year for small pelagic fish (Pacific sardine, Pacific mackerel) and for market squid in summer. Some small vessels harvest tuna seasonally when they are available. The proposed time/area closure will have no effect on small vessels because they do not have the endurance and markets to fish that far south.

The portion of the U.S. longline fleet (approximately 18 vessels) operating out of California has historically caught bigeye tuna in the swordfish fishery (now closed), so they should not be affected by the longline fishery limit. Further, the recent prohibition of swordfish targeting by this fleet has encouraged many of the vessel owners to relocate their activity to Hawaii (5 have moved or are moving in date); therefore, the likelihood that they will fish in the ETP for bigeye tuna is reduced. The portion of the fleet operating out of Hawaii has generally operated outside the boundaries of the IATTC Convention Area, and has not made significant catches in those waters. Also, with the reopening of the swordfish fishery for that fleet, effort directed at bigeye tuna (which has mainly occurred west of the Convention Area) should decrease, so there is a very low likelihood that the bigeye catch limit of 100 metric tons will be reached and trigger a closure.

As a result, a regulatory flexibility analysis is not required and none has been prepared.

Authority: 16 U.S.C. 961–963 and 971 *et seq.*

Dated: June 21, 2004.

William T. Hogarth,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.
[FR Doc. 04–14973 Filed 6/24/04; 8:45 am]
BILLING CODE 3510–22–5

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040617187–4187–01; I.D. 060704H]

RIN 0648–AR85

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Bottomfish Fishery; Fishing Moratorium

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to extend the current moratorium on harvesting seamount groundfish from the Hancock Seamount in the Northwestern Hawaiian Islands (NWHI) for 6 years, until August 31, 2010. The fishery has been under a moratorium since 1986. This action is being taken in response to a recommendation by the Western Pacific Fishery Management Council from its Bottomfish Plan Team (Plan Team) and Scientific and Statistical Committee (SSC) that revealed that pelagic armorhead (*Pseudopentaceros wheeleri*; formerly, *Pentaceros richardsoni*), an overfished stock, has not recovered. The intent of this action is to allow the protection provided for this resource to continue.

DATES: Comments must be submitted by July 12, 2004.

ADDRESSES: You may submit comments on this proposed rule by any of the following methods:

•E-mail: 0648–AR85.PIR@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: 0648–AR85.

•Federal e-Rulemaking portal: <http://www.regulations.gov> Follow the instructions for submitting comments.

•Mail: William L. Robinson, Regional Administrator, Pacific Islands Region, NOAA Fisheries, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

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August 18, 2004

Mr. Jimmy Story
OES / OMC , Room # 7820
U.S. Dept. of State
Washington, DC 20502

Re: U.S. Canada Albacore Treaty

Dear Jimmy:

As we have discussed in the past with the State Department, there continues to be crowding on the fishing grounds in the North Pacific U.S. EEZ by Canadian vessels, problems concerning the markings on vessels, and differences over the definition of albacore troll vessels under the Treaty. A number of U.S. vessels have also reported a generally arrogant and intimidating attitude by a number of the Canadian albacore vessels, that was not the case in the past. I have asked WFOA members to document this activity and I should have a report on it at the end of this summer season. There have also been questions raised concerning Canadian port access by U.S. troll vessels.

Additionally, there is talk of capacity reduction through limited entry or other methods from NGO's working within the Federal Council system under the Magnuson Act, and the recently published NOAA-NMFS United States National Plan of Action for the Management of Fishing Capacity. The PFMC already is doing preliminary work on a limited entry plan for HMS longline fisheries. Thus, we expect an effort to be made to limit the U.S. troll albacore fleet within a reasonably short period of time. Without an understanding of the crucial impact that international cooperation has on the albacore fisheries in the North Pacific, which should include a clear understanding of the operation and responsibilities of the Canadian fleet under the Treaty, we fear the PFMC might make the decision to take unilateral action to reduce the capacity of the U.S. fleet, regardless of the consequences for that fleet given international competition.

For this and other reasons we are encouraged that for the first time in many years a representative of the State Department will be attending the September meeting of the PFMC in San Diego. We would greatly appreciate, and think it would be very constructive, to meet briefly with you before that meeting, possibly when you first arrive in San Diego. Would it be possible to make such arrangements with you?

Sincerely,

Wayne Heikkila
Executive Director

cc: **Rebecca Lent - NMFS**
Svein Fougner - NMFS
Gary Sakagawa - NOAA/NMFS
Don McIsaac - Pacific Fisheries Management Council
Louis Hill - WFOA President
John LaGrange - AFRF President
Peter Flournoy - WFOA/AFRF Counsel
Dr. Vidar Wespestad - AFRF scientific advisor

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Mr. Bill Gibbons-Fly
OES / OMC , Room # 7820
U.S. Dept. of State
Washington, DC 20502

August 17, 2004

Re: Northern Committee / CWPFC

Dear Bill:

Thank you for the response to our letter of July 9, 2004 in which WFOA expressed our concerns with regard to international management of Northern Albacore. Just to followup with a few other thoughts on developing issues affecting the U.S. troll fleet, I have listed them below.

As you are aware, out of the approximate 120,000 mt of albacore landed in the North Pacific above 30°N latitude, the U.S. lands about 12% to 15%, the Japanese land about 65%, and the balance from other Asian nations. (Canada lands only about 1.5% of which 80% is generally caught in U.S. waters). Thus, the two major players are the U.S. and Japan.

So far in 2004 there has been an observed increase in illegal high-seas drifnetting for various species, including albacore, in the region west of the international dateline between latitudes 35°N to 45°N and longitudes 175°E to 165°E. Our member's vessels have documented and filmed this activity and WFOA has relayed the information to the USCG & DHS in Honolulu and Seattle. We are very concerned that many of these vessels fly no flag and have no identifying marks. Also, we would like to find out where and to whom these vessel market their product of which much could be albacore tuna. We believe Japan has the same concerns about IUU fishing and that Japan could be very helpful in using its resources to trace this illegally caught albacore. (just as they have traced the ownership of various Taiwanese purse seiners in the Western Pacific).

As producers of North Pacific albacore we are also troubled by the possibility of Japan and the U.S. not having sufficient input in the management process within the CWPFC, even with the approval of the as yet unstructured Northern Committee. The daily news reports, as well as the discussions on capacity in the meetings in Sapporo, indicate that the Pacific Island Nations are apparently influenced more by short term opportunities, than by the long term economic and biological health of the fishery. It would be unfortunate for a block of countries, that can't seem to get it together themselves in their own backyard, to have such a great impact on a resource which U.S. albacore trollers depend upon, possibly by simple inaction.

Because of these issues mentioned above it becomes increasing important that the two nations catching most of the North Pacific albacore (U.S. & Japan), and doing much of the research on this stock of fish caught north of 30°N, be able to get together soon to have a dialog on the issues --- the health of the albacore fishery, illegal, unreported and unregulated fishing in the North Pacific for albacore, and a
NP Albacore Issues August 2004

strategy for the Northern Committee and its influence over North Pacific albacore. In this context we were wondering if progress has been made to arrange for bilateral albacore discussions with the Japanese in October when they will be on the West Coast.

Sincerely,

Wayne Heikkila
Executive Director

cc: Rebecca Lent - NMFS
Svein Fougner - NMFS
Gary Sakagawa - NOAA/NMFS
Don McIsaac - Pacific Fisheries Management Council
Louis Hill - WFOA President
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