

Safety of Railroad Bridges, which FRA is completing expeditiously as a non-regulatory proceeding, will benefit railroad bridge owners by giving them prompt advice regarding the development of their bridge safety programs, and that the early work to be done railroad bridge owners in conformance with this recommendation will benefit the owners and the public when FRA issues regulations conforming to the legislative mandate.

#### *Effect of the Amendment to This Statement of Policy*

This amendment to Policy contains guidelines for the development of effective programs for the management and safety of railroad bridges. It is meant to be advisory in nature. It does not have the force of regulations under which FRA ordinarily issues violations and assesses civil penalties. The guidelines contained herein represent the general criteria against which FRA will evaluate each railroad's bridge inspection and management program.

Even without specific bridge safety regulations, FRA maintains authority to perform safety inspections of any railroad facility and to issue emergency orders under 49 U.S.C. 20104, 49 U.S.C. 20107, and 49 CFR part 209. This amendment to the Policy does not change FRA's statutory emergency order authority with respect to railroad bridge safety. This emergency order authority permits FRA, if necessary, to remove from service, or otherwise impose conditions on any railroad operation which, in the judgment of the agency, poses an emergency situation involving a hazard of death or personal injury. FRA will not hesitate to use this authority if circumstances warrant.

#### **List of Subjects in 49 CFR Part 213**

Penalties, Railroad safety, Railroads.

#### **PART 213—[AMENDED]**

■ 1. The authority citation for part 213 continues to read as follows:

**Authority:** 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

■ 2. Section 14 is added to Appendix C, Part 213 to read as follows:

#### **Appendix C to Part 213—Statement of Agency Policy on the Safety of Railroad Bridges**

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#### *14. Railroad Implementation of Bridge Safety Programs*

FRA recommends that each track owner or other entity which is responsible for the integrity of bridges which support its track

adopt and implement an effective and comprehensive program to ensure the safety of its bridges. The bridge safety program should incorporate the following essential elements, applied according to the configuration of the railroad and its bridges. The basis of the program should be in one comprehensive and coherent document which is available to all railroad personnel and other persons who are responsible for the application of any portion of the program.

The program should include:

(a) Clearly defined roles and responsibilities of all persons who are designated or authorized to make designations regarding the integrity of the track owner's bridges. The definitions may be made by position or by individual;

(b) Provisions for a complete inventory of bridges that carry the owner's track, to include the following information on each bridge:

(1) A unique identifier, such as milepost location and a subdivision code;

(2) The location of the bridge by nearest town or station, and geographic coordinates;

(3) The name of the geographic features crossed by the bridge;

(4) The number of tracks on the bridge;

(5) The number of spans in the bridge;

(6) The lengths of the spans; and

(7) Types of construction of:

(i) Substructure;

(ii) Superstructure; and

(iii) Deck;

(8) Overall length of the bridge.

(9) Dates of:

(i) Construction;

(ii) Major renovation; and

(iii) Strengthening;

(10) Identification of entities responsible for maintenance of the bridge or its different components;

(c) Known capacity of its bridges as determined by rating by competent engineer or by design documents;

(d) Procedures for the control of movement of high, wide or heavy loads exceeding the nominal capacity of bridges;

(e) Instructions for the maintenance of permanent records of design, construction, modification, and repair;

(f) Railroad-specific procedures and standards for design and rating of bridges;

(g) Detailed bridge inspection policy, including:

(1) Inspector Qualifications.

(i) Bridge experience or appropriate educational training.

(ii) Training on bridge inspection procedures.

(iii) Training on Railroad Workplace Safety.

(2) Type and frequency of inspection.

(i) Periodic (at least annually).

(ii) Underwater.

(iii) Special.

(iv) Seismic.

(v) Cursory inspections of overhead bridges that are not the responsibility of the railroad.

(3) Inspection schedule for each bridge.

(4) Documentation of inspections.

(i) Date.

(ii) Name of inspector.

(iii) Reporting Format.

(iv) Coherence of information.

(5) Inspection Report Review Process.

(6) Record retention.

(7) Tracking of critical deficiencies to resolution;

(h) Provide for the protection of train operations following an inspection, noting a critical deficiency, repair, modification or adverse event and should

(1) Include a listing of qualifications of personnel permitted to authorize train operations following an adverse event; and

(i) Detailed internal program audit procedures to ensure compliance with the provisions of the program.

Issued in Washington, DC, on January 7, 2009.

**Clifford C. Eby,**

*Acting Administrator.*

[FR Doc. E9–436 Filed 1–12–09; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Parts 216 and 300**

**[Docket No. 070717339–81648–02]**

**RIN 0648–AV37**

### **International Fisheries; Pacific Tuna Fisheries; Revisions to Regulations for Vessels Authorized to Fish for Tuna and Tuna-like Species in the Eastern Tropical Pacific Ocean and to Requirements for the Submission of Fisheries Certificates of Origin**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to revise regulations governing vessels authorized by the United States to fish for tuna and tuna-like species in the eastern tropical Pacific Ocean (ETP). This final rule updates and clarifies regulations promulgated by NMFS to implement the Marine Mammal Protection Act, the Tuna Conventions Act, the Dolphin Protection Consumer Information Act, and resolutions adopted by the Inter-American Tropical Tuna Commission (IATTC) and by the Parties to the Agreement on the International Dolphin Conservation Program (AIDCP). This rule modifies the procedures and requirements for the Vessel Register, the list of vessels authorized to fish for tuna and tuna-like species in the ETP. Requirements for the submission of certifications by importers are also revised. This rule is intended to clarify the regulations, facilitate management of U.S. vessels,

and update the regulations to be consistent with resolutions adopted by the members of the IATTC and the Parties to the AIDCP.

**DATES:** This final rule is effective February 12, 2009.

**ADDRESSES:** Supporting documents (including the Categorical Exclusion memo, Regulatory Flexibility Act certification memo, and Regulatory Impact Review) regarding this final rule can be found at the Federal eRulemaking Portal Web site at <http://www.regulations.gov>. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Southwest Regional Office, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802, and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Susan Wang, NMFS, Southwest Region, Protected Resources Division, at (562) 980-4199.

**SUPPLEMENTARY INFORMATION:**

**Background**

The United States is a member of the IATTC, established in 1949 under the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention). The IATTC provides an international forum to ensure the effective conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include waters of the ETP bounded by the coast of the Americas, the 40° N. latitude and 40° S. latitude, and the 150° W. longitude (50 CFR 300.21). Resolutions under the IATTC are adopted by consensus and are binding on the members of the IATTC. The Tuna Conventions Act (16 U.S.C. 951 *et seq.*) authorizes the Secretary of Commerce to promulgate regulations implementing IATTC resolutions. The Secretary's authority has been delegated to the Assistant Administrator for Fisheries, NMFS.

The United States is also a Party to the AIDCP. The AIDCP was established in May 1998 when eight nations, including the United States, signed a binding, international agreement to implement the International Dolphin Conservation Program (IDCP). The agreement became effective on February 15, 1999, and provides greater protection to dolphin stocks and enhanced conservation of yellowfin tuna and other living marine resources in the ETP. The IDCP and resolutions adopted by the Parties to the AIDCP are

implemented domestically under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*).

Regulations implementing the International Dolphin Conservation Program, Tuna Conventions Act, DPCIA, and resolutions adopted by the IATTC and AIDCP concerning tuna fisheries in the ETP are codified at 50 CFR parts 216 and 300. On July 11, 2008, NMFS published a proposed rule in the *Federal Register* (73 FR 39915), to revise these regulations in order to facilitate management of U.S. vessels authorized to fish for tuna and tuna-like species in the Convention Area and to ensure consistency between the operation of these vessels and resolutions adopted by the IATTC and the IDCP. In that proposed rule, NMFS solicited public comment on revisions to the regulations to require: (1) the collection of a vessel photograph and vessel information from all commercial fishing vessels and commercial passenger fishing vessels (CPFVs) authorized to fish for tuna and tuna-like species in the Convention Area; (2) annual written notification to list a small purse seine vessel as active or inactive; (3) written notification of the intent to transfer a purse seine vessel appearing on the IATTC's Vessel Register to foreign registry and flag; (4) payment of an ETP purse seine vessel operator permit application fee; (5) for vessels authorized to set on dolphins, vessel inspections twice per year and the use of high-intensity floodlights; (6) requests for active status on the IATTC Vessel Register to be treated as frivolous if a purse seine vessel was listed as active but did not fish for tuna at all in the Convention Area; (7) removal of vessels from the Vessel Register if the owner lacks valid vessel documentation, or, for tuna purse seine vessels, if the owner has made a frivolous request or has notified NMFS of the intent to transfer the vessel to foreign registry and flag; (8) submission of certifications by importers to be within 10 days of importing a shipment into the United States, rather than within 30 days; and (9) electronic submissions of certifications to be in Portable Document Format (PDF). Public comment was also solicited on numerous non-substantive modifications and clarifications to the regulations.

In this final rule, NMFS adopts most of the revisions in the proposed rule, as described above. In this final rule, NMFS responds to public comments and makes technical modifications, described in more detail under the section titled "Changes from the Proposed Rule."

**Responses to Comments**

NMFS solicited public comments on the proposed rule. A public hearing was held on July 28, 2008, and the public comment period closed on August 11, 2008. One comment was received at the public hearing and 4 comments by fax, standard mail, or electronically from representatives of the tuna import and tuna fishing industry, the Marine Mammal Commission (an independent agency of the U.S. government), and non-profit organizations. The key issues and concerns are summarized below and responded to as follows:

*General Comments on the Purpose of the Proposed Revisions*

*Comment 1:* One commenter asked for additional explanation regarding the need for and appropriateness of the proposed changes, especially those governing the tuna purse seine portion of the Vessel Register, given the low level of participation in the U.S. ETP tuna purse seine fishery. In particular, the commenter noted that: (1) the U.S. ETP purse seine fleet has not come near to approaching its 8,969-metric ton (mt) capacity limit; (2) currently, there are only two purse seine vessels categorized as active on the Vessel Register; and (3) the majority of U.S. Vessels on the IATTC Vessel Register are non-purse seine vessels, but the proposed regulations would have limited effects on the operations of these vessels.

*Response:* Even if our vessel numbers are relatively few, the United States is still obligated by the AIDCP and the Convention to ensure that U.S. vessels and persons operate in compliance with our treaty obligations. Participation of U.S. vessels in the ETP tuna purse seine fishery has fluctuated over the years. Although current participation is low, NMFS recognizes that conditions could change and participation increase again. It is also important to prevent the transfer of capacity to other nations to fulfill our commitment to limiting the total purse seine fleet capacity in the ETP (IATTC Resolution on the capacity of the tuna fleet operating in the eastern Pacific Ocean; C-02-03, June 2002). Finally, the IATTC requires that all vessels (purse seine and non-purse seine) authorized to fish for tuna and tuna-like species in the ETP be listed on the Vessel Register (IATTC Resolution on a Regional Vessel Register; C-00-06, June 2000). The IATTC imposes additional requirements for purse seine vessels listed on the Vessel Register, but not for non-purse seine vessels. Thus, the regulations being revised by this rule focus primarily on the ETP tuna purse seine fleet. The regulations

governing non-purse seine vessels are not being changed at this time and are located at other sections of the CFR.

#### *Definition of Tuna Product*

*Comment 2:* One commenter opposed the revision to the definition of the term “tuna product” that would limit the definition to products intended for human consumption, stating that such a definition would be inconsistent with the intent of Congress in the DPCIA. The commenter recommended that NMFS not adopt the revised definition.

*Response:* Upon consideration of the comment, the definition for the term “tuna product” will not be revised and will remain as it is currently defined at 50 CFR 216.3.

#### *Vessel Register Requirements*

*Comment 3:* NMFS received one comment that the preamble to the proposed rule incorrectly stated that the capacity limit of the U.S. tuna purse seine fleet under the IATTC capacity resolution is 8,969 mt. The commenter recommended filing an amended **Federal Register** notice with a new public comment period to correct this error. The commenter emphasized that the United States agreed to limit the U.S. tuna purse seine fleet to a capacity of 8,969 mt so long as the June 2002 Resolution on the capacity of the tuna fleet operating in the ETP (Revised; C-02-03) remained in force and was respected by all Parties (referencing a letter written in 2002 by Mary Beth West, U.S. Department of State, to Robin Allen, Director of the IATTC). The commenter contended that the resolution to limit the capacity of the tuna purse seine fleet in the ETP has not been respected by all Parties, and thus the U.S. tuna purse seine fleet should not be bound to the capacity limit of 8,969 mt.

*Response:* We agree with the commenter and clarify here that the U.S. ETP tuna purse seine fleet’s capacity limit of 8,969 mt is a self-imposed capacity limit agreed to by the United States, and is not the capacity limit established for the United States in the IATTC’s 2002 resolution on capacity (C-02-03). We do not believe it is necessary or required, however, to file an amended **Federal Register** notice with a new public comment period. The regulatory provisions regarding the capacity limit of 8,969 mt were already established in regulation and were not proposed to be revised. The current regulations at 50 CFR 300.22(b)(4)(i)(A) state that “[t]he cumulative carrying capacity of all vessels categorized as active on the Vessel Register may not exceed 8,969 mt in a given year.” The

current regulations also allow additional U.S. purse seine vessels to be added to the Vessel Register and categorized as active to replace a vessel removed from the active list, “provided the total carrying capacity of active vessels does not exceed 8,969 mt” (50 CFR 300.22(b)(7)(ii)). These provisions were adopted in 2005 by notice-and-comment rulemaking (70 FR 19004, April 12, 2005).

*Comment 4:* One commenter stated that the current size categories distinguishing purse seine vessels capable of setting on or encircling dolphins (“large” vessels exceeding 400 short tons (st) (362.8 mt) carrying capacity) from those that are not capable (“small” vessels of 400 st (362.8 mt) carrying capacity or less) are no longer valid. The commenter noted that the proposed rule maintains this distinction and does not address the directive in the 2005 Consolidated Appropriations Act (Pub. L. No. 108-447) instructing NMFS to dedicate funding toward revising the definition for a vessel that is not capable of setting on or encircling dolphins. The commenter recommended that NMFS propose a new definition or at least explain what has been done and what NMFS is doing to address the directive from the 2005 Consolidated Appropriations Act.

*Response:* Revising the definition for a purse seine vessel that is not capable of setting on or encircling dolphins is not within the scope of this rulemaking. Researchers at the Southwest Fisheries Science Center (SWFSC), however, have been working on studies to address this issue in response to the directive given in the 2005 Consolidated Appropriations Act. Since 2006, the SWFSC has been contracting with the IATTC staff to sample the landed catch of Class 4 - 5 (“small”) purse seine vessels in international ports. The SWFSC has also been collecting data on various characteristics of the sampled Class 4 - 5 purse seine vessels (e.g., number of speed boats, presence of a dolphin safety panel) to collect more refined information on what characteristics, beyond size class and horsepower, make a vessel capable of setting on dolphins. The SWFSC examined the catch composition data to try to predict whether tuna sets were made on dolphins or not, based on the idea that yellowfin tuna caught in association with dolphins are larger and generally comprise a much larger percentage of the catch compared to other set types. From the data, the SWFSC can identify tuna sets that do not fit the usual profile of a sample not caught in association with dolphins. The analyses are not final, however, nor

do the data provide definitive proof of whether a vessel is setting on dolphins or not. In addition, although funding was set aside to provide for observers on Class 4 - 5 purse seine vessels, no vessels have agreed to participate in the voluntary observer program. Without observer data for these vessels, there is insufficient data to support a finding that vessels of 400 st (362.8 mt) carrying capacity or less have a regular and significant association with dolphins in the fishery.

NMFS will continue to work on addressing this issue. It is important to note, however, that developing a revised definition is but one step in the process. Several aspects of the approval and implementation of a revised definition are beyond the authority of NMFS. For international purposes, revised definitions for purse seine vessels capable of setting on or encircling dolphins (i.e., “large” vessels) and for those not capable of setting on or encircling dolphins (i.e., “small” vessels) would have to be approved by the Parties to the AIDCP. An example of this would be requiring observer coverage on what are now considered “small vessels.”

*Comment 5:* One commenter stated that reporting a vessel’s fish hold capacity in cubic meters is not currently a requirement under the Pacific Fishery Management Council’s (PFMC) Highly Migratory Species (HMS) Fishery Management Plan (FMP), the Western PFMC’s Pelagic Fisheries FMP, or the High Seas Fisheries Compliance Act (HSFCA), and that requiring the reporting of this information is unnecessary and burdensome given that there is no IATTC resolution on capacity for these vessels.

*Response:* The IATTC Vessel Register, established in June 2000 by the IATTC Resolution on a Regional Vessel Register (C-00-06), is the list of all vessels authorized by the member nations to fish for tuna and tuna-like species in the Convention Area. As a member of the IATTC, the United States is required to submit specific information on such vessels, in order to update and maintain the Vessel Register. To meet this requirement, the revised regulations would require collection of vessel information from all commercial fishing vessels and CPFVs authorized by the United States to fish for tuna and tuna-like species in the Convention Area. One piece of information required for the Vessel Register is the vessel’s fish hold capacity in cubic meters. For vessels authorized to fish for tuna and tuna-like species in the Convention Area under the HMS FMP, the fish hold capacity in cubic meters is already

collected on the Pacific HMS permit application. For all other non-purse seine vessels, NMFS is planning a separate rulemaking action to collect this and other required Vessel Register information through the HSFCA permit application. The commenter is correct that fish hold capacity in cubic meters is not currently collected on the HSFCA permit application. However, as stated above, this information is required to be collected for the purposes of the IATTC Vessel Register.

*Comment 6:* One commenter questioned why the 10-percent surcharge for late payment of the vessel assessment fee would apply to ETP tuna purse seine vessels for which active or inactive status is requested during the calendar year and requested clarification on when the 10-percent surcharge applies.

*Response:* According to the minutes for the 16th Meeting of the Parties to the AIDCP (October 26, 2006), the 10-percent late fee applies to vessels entering the fishery during the course of the year only if the vessel fished in the Convention Area in the previous calendar year. Thus, payment of the vessel assessment fee is considered late and subject to the 10-percent late fee for vessels for which active status is requested: (1) during the calendar year, only if the vessel was listed as active in the previous calendar year and was not listed as inactive at the beginning of the calendar year; or (2) for the following calendar year, only if payment of the fee is received after the applicable dates (September 15 if a dolphin mortality limit (DML) is requested and November 30 if a DML is not requested) and the vessel was listed as active in the year the request was made. The 10-percent late fee would not apply to purse seine vessels for which inactive status is requested or to purse seine vessels licensed under the South Pacific Tuna Treaty (SPTT) that are exercising their option to make a single trip into the ETP per year. The regulatory text has been corrected and revised to clarify when the 10-percent late fee would apply (see the section titled "Changes from the Proposed Rule" for more details).

*Comment 7:* One commenter stated that it is unfair to impose a penalty for frivolous requests because there are economic (e.g., fuel prices, fish prices) or other reasons (e.g., ocean conditions) for why a vessel may not land any tuna or why tuna would make up less than 20 percent of its total catch by weight in a given year. The commenter noted that this would be particularly unfair if it applied to small purse seine vessels, longline vessels, and troll vessels.

*Response:* The frivolous request criteria apply only to owners of tuna purse seine vessels who have requested that a vessel be categorized as active on the Vessel Register, but did not fish for tuna at all in the Convention Area in that same year, or when less than 20 percent of the vessel's total landings was comprised of tuna harvested by purse seine in the Convention Area in that same year. The main purpose of the frivolous request determinations is to deter vessel owners who are not planning to actively fish for tuna from requesting active status and occupying a portion of the U.S. fleet's limited capacity. Factors such as those mentioned by the commenter should be taken into account before applying for active status. In addition, the regulations allow for the consideration of extraordinary circumstances, or circumstances beyond the control of the vessel owner, in determining whether a request is frivolous. We also note that, although frivolous requests apply to small purse seine vessels, there would be little to no effects on small purse seine vessels, because they are not required to be categorized as active on the Vessel Register as long as tuna caught in the Convention Area comprise 50 percent or less of the vessel's total landings in a given year.

#### *Revised Floodlight Requirements for Tuna Purse Seine Vessels with Dolphin Mortality Limits (DMLs)*

*Comment 8:* Two comments were received regarding the revised floodlight requirements for tuna purse seine vessels with DMLs. One commenter requested clarification that these requirements apply only to Class 6 purse seine vessels and not to troll or long line vessels. Another commenter requested that more explanation be added to reiterate that the prohibitions on making sundown sets and on initiating sets at night still apply.

*Response:* The revised floodlight requirements apply only to tuna purse seine vessels greater than 400 st (362.8 mt) carrying capacity to which a DML has been assigned. The floodlight requirements do not alter the prohibition on making sundown sets, codified at 50 CFR 216.24(c)(6)(iii). Instead, the floodlights are required to ensure that dolphins are released successfully from any sets that have not been completed by sundown.

#### *Fisheries Certificates of Origin and Verification of Dolphin-Safe Labeling Standards*

*Comment 9:* One commenter questioned why NMFS proposed to shorten the maximum time (the

deadline) for submitting Fisheries Certificates of Origin (FCOs) from within 30 days to within 10 days of the shipment's entry into U.S. commerce. The commenter asked if there have been enforcement issues that led to this proposed revision and expressed concern that 10 days may not provide sufficient time to submit the certifications.

*Response:* NMFS proposed to reduce the time required for submitting FCOs and associated certifications from within 30 days to within 10 days to aid in enforcement of the regulations. NMFS routinely identifies importers of record that fail to comply with the regulations to submit the FCO form, or that submit incomplete forms. As stated in the preamble of the proposed rule, by 30 days the tuna or products may already be offered for sale, purchased, or consumed before violations of the requirements governing certification are determined. Requiring the submission of FCOs and associated certifications within 10 days of the shipment's import into U.S. commerce would allow NMFS to determine violations of the certification requirements early enough to more effectively respond with any necessary enforcement actions and options (e.g., holding the tuna or tuna products if a violation of dolphin-safe standards has been determined). Regarding whether 10 calendar days is sufficient time for importers to submit the forms to NMFS, we note that importers are already required to submit completed FCOs to U.S. Customs and Border Protection (CBP) upon import of a shipment into the United States. The only additional piece of information required prior to submitting the form to NMFS is the Customs Entry Number and date of entry (required to link the forms to the electronic import data received from CBP). Most importers already submit their forms within 10 days of the shipment's entry into U.S. commerce. The remaining importers currently submit their forms monthly, but should have sufficient time to submit their forms within the 10 day time period.

*Comment 10:* One commenter identified two problems with the regulations at 50 CFR 216.91(a)(2)(i) requiring written certification of the dolphin-safe status of tuna caught by purse seine: (1) the falsification of dolphin-safe verification forms by observers; and (2) the requirement that observers issue or endorse only documents approved by the Parties to the AIDCP (this was identified as a problem, because the Parties to the AIDCP do not recognize United States standards for dolphin-safe tuna). The

commenter recommended holding a workshop to discuss these problems.

*Response:* NMFS recognizes the issues raised by the commenter; however, these issues are beyond the scope of this rule, as well as beyond the authority of NMFS. These issues would be more appropriately addressed by the International Review Panel established by the AIDCP. The AIDCP routinely assesses and evaluates these issues to determine whether any amendments to resolutions should be considered. In addition, the paragraph of the regulations referred to by the commenter at 50 CFR 216.91(a)(2)(i) deals with tuna purse seine vessels operating outside of the ETP. These regulations are not yet applicable because the Assistant Administrator has not determined that a regular and significant association occurs between dolphins and tuna outside of the ETP. However, these regulations provide provisions for dolphin-safe labeling standards should such a determination be made in the future.

#### *Direct Notification Regarding IATTC Management Recommendations and Resolutions*

*Comment 11:* Two commenters questioned the removal of the requirement at 50 CFR 300.25(a) that the Regional Administrator, Southwest Region, must directly notify owners or agents of U.S. tuna vessels regarding IATTC recommendations. The commenters stated that direct notification is a more effective method of providing notice than publishing the information in the **Federal Register**.

*Response:* The main purpose of the revisions to 50 CFR 300.25(a) is to clarify that the IATTC recommendations and resolutions are implemented through appropriate notice-and-comment rulemaking in the **Federal Register** and that the **Federal Register** document would serve as the public notification. NMFS plans to continue providing direct notification to affected entities regarding IATTC management recommendations and resolutions as a courtesy to these entities, but not as a requirement under the regulations.

#### *Live Fish Transfers*

*Comment 12:* Two comments were received stating that this rule does not address the issue of the transshipment of tuna caught by purse seine from one vessel to another vessel at sea in the Convention Area. One commenter recommended that this rule should address the prohibition on the transshipment of live tuna.

*Response:* The issue of the transshipment of live tuna at sea in the

Convention Area is outside of the scope of this rule. This rule was not intended as the vehicle to deal with this issue. NMFS plans to address this issue in a future rulemaking.

#### *Additional Updates to the Regulations*

*Comment 13:* One commenter suggested updating the regulations at 50 CFR 300.22(b)(4)(i) by removing the provisions referencing the years 2005 and 2006, because these provisions are no longer applicable.

*Response:* NMFS agrees with the suggested revisions to remove the outdated provisions in 50 CFR 300.22(b)(4)(i). The revisions are included in this final rule and described in more detail in the “Changes from the Proposed Rule” section below.

#### **Changes from the Proposed Rule**

##### *Definitions for Tuna Product and Tuna Species*

In response to the public comments, the definition of the term “tuna product” will not be revised as described in the proposed rule. The definition for “tuna product” will remain as defined at 50 CFR 216.3 to mean “any food product processed for retail sale and intended for human or animal consumption that contains an item listed in § 216.24(f)(2)(i) or (ii), but does not include perishable items with a shelf life of less than 3 days.”

In addition, the proposed rule would have added to 50 CFR 216.3 a definition for “Bluefin tuna” to mean the species *Thunnus thynnus*, in order to define the term as used in the Harmonized Tariff Schedule of the United States (HTS). This definition was meant to include both Atlantic and Pacific bluefin tuna, because the HTS uses the general term “Bluefin tuna” to refer to both. It was brought to our attention, however, that Atlantic bluefin tuna are referred to as *Thunnus thynnus*, whereas Pacific bluefin tuna are referred to as *Thunnus orientalis*. In order to include both the Atlantic and Pacific bluefin tuna, this final rule revises the definition of “Bluefin tuna” to mean the species *Thunnus thynnus* or *Thunnus orientalis*.

##### *Clarification on Late Fees for Vessel Assessment Fees*

In 50 CFR 216.24(b)(6)(iii)(F), we clarified under what circumstances payment of the vessel assessment fee would be considered late and would be subject to a 10-percent surcharge. However, the proposed rule contained some errors that are clarified and corrected in this final rule.

In this final rule, we clarify that payment of the vessel assessment fee is

considered late and subject to a 10-percent surcharge for purse seine vessels: (1) for which active status is requested to replace a vessel removed from active status on the Vessel Register during the year, if the vessel was listed as active in the previous calendar year and was not listed as inactive at the beginning of the calendar year; or (2) for which active status is requested for the following calendar year, if payment is made after the applicable deadline (September 15 if a DML is requested and November 30 if a DML is not requested) and the vessel was listed as active in the same year the request was made. Payment of the vessel assessment fee is not considered late and not subject to the 10-percent surcharge for purse seine vessels: (1) for which inactive status is requested; (2) for which active status is requested to replace a vessel removed from active status on the Vessel Register during the year, if the vessel was not listed as active in the previous calendar year or the vessel was listed as inactive at the beginning of the calendar year; or (3) for which active status is requested for the following calendar year, if the vessel was not listed as active in that same year the request was made. Payment of the vessel assessment fee is also not considered late and not subject to the 10-percent surcharge for purse seine vessels licensed under the South Pacific Tuna Treaty (SPTT) that exercise their option to make a single trip into the ETP per calendar year. This final rule revises 50 CFR 216.24(b)(6)(iii)(F), 300.22(b)(4)(iii), and 300.22(b)(7) accordingly.

##### *Additional Non-Substantive Revisions and Updates*

In response to the public comments, this final rule revises 50 CFR 300.22(b)(4)(i) to remove outdated provisions that were established to specify how requests for active status would be handled in 2005 and 2006, because these provisions are no longer applicable. Revisions are made to 50 CFR 300.22(b)(4)(i) to: (1) remove paragraph § 300.22(b)(4)(i)(C), which states that for 2005 only, requests for active status on the purse seine list will be prioritized on a first-come, first-served basis; (2) remove the references to the years 2005 and 2006 in the introductory paragraph of § 300.22(b)(4)(i)(D) and paragraphs § 300.22(b)(4)(i)(D)(1) and (2); and (3) redesignate paragraph § 300.22(b)(4)(i)(D) as paragraph § 300.22(b)(4)(i)(C). This final rule also revises the introductory paragraph to 50 CFR 300.22(b)(4)(ii) to remove the phrase “Beginning with requests made

for 2005", because this is an outdated provision.

This final rule also adds to 50 CFR 216.24(f)(2)(i)(D) and 216.24(f)(2)(ii)(D) the HTS number 1604.20.1000 for fish pastes, to clarify that products imported into the United States under this HTS number that contain yellowfin tuna or other tuna must be accompanied by a properly completed FCO. This addition is within the scope of the proposed rule, which clarified at 50 CFR 216.24(f)(2)(i) and 216.24(f)(2)(ii) that all shipments containing tuna or tuna products (except fresh tuna) imported into the United States must be accompanied by an FCO.

This final rule revises 50 CFR 300.22(b)(7)(iv) and 300.22(b)(7)(v) to clarify that a replacement vessel can be categorized as active on the Vessel Register to replace one or more vessels removed from the Vessel Register, rather than just one vessel. The regulatory language at 50 CFR 300.22(b)(7)(iv) and 300.22(b)(7)(v) will be revised to read: "The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel or vessels being replaced." Also, the final rule adds to 50 CFR 300.21 a definition for "Regional Administrator" to clarify that the term refers to the Regional Administrator, Southwest Region.

### Classification

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866. NMFS prepared a Regulatory Impact Review for the proposed rule, available at the Federal E-Rulemaking Portal Web site at <http://www.regulations.gov>. No comments were received regarding the Regulatory Impact Review, and no further analyses were conducted for this final rule.

### Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

### Paperwork Reduction Act

This final rule contains new and revised collection-of-information

requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under control number 0648-0387. The following collection-of-information requirements have been approved by OMB: (1) collection of a vessel photograph as part of the ETP tuna purse seine vessel permit application; (2) annual written notification to request a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active on the Vessel Register, including the owner or managing owner's signature and business telephone and fax numbers and the required Vessel Register information (i.e., the vessel name, registration number, and previous name(s) and flag(s); a vessel photograph with the vessel registration number legible; the name and business address of the owner(s) and managing owner(s); port of registry; International Radio Call Sign; where and when built; length, beam, and moulded depth; gross tonnage, fish hold capacity, and carrying capacity; engine horsepower; and type of fishing method(s)); (3) annual written notification to request that a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as inactive on the Vessel Register, including the vessel name, registration number, and vessel owner or managing owner's name, signature, business address, and business telephone and fax numbers; and (4) written notification prior to submitting an application to transfer a purse seine vessel listed on the Vessel Register to foreign registry and flag, including the vessel name and registration number, the estimated submission date of the application, and the vessel owner or managing owner's name and signature. Public reporting burdens per individual response for the new and revised collection-of-information requirements are estimated to average 35 minutes for the ETP tuna purse seine vessel permit application; 35 minutes for the written notification to request active status; 5 minutes for the written notification to request inactive status; and 5 minutes for the written notification of the intent to transfer a vessel to foreign registry and flag. These reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

This final rule also contains a non-substantive change subject to the PRA and which has been approved by OMB under control number 0648-0335. The

non-substantive change request submitted to and approved by OMB requires that the CBP importer of record submit a copy of the FCO and associated certifications to NMFS within 10 days of a shipment's entry into U.S. commerce, rather than within 30 days (except when the tuna will be processed in the United States, in which case the forms must be submitted to NMFS after endorsement by the final processor or exporter). The public reporting burden for the revised collection of information requirement would remain the same (estimated to average 20 minutes per individual response), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

### Endangered Species Act

NMFS prepared a Biological Opinion for an interim final rule (65 FR 30, January 3, 2000) to implement the IDCP in December 1999, and in July 2004 issued an amended Incidental Take Statement after taking into account the revisions made in the 2004 final rule (69 FR 55288, September 13, 2004). In the 1999 Biological Opinion, NMFS concluded that fishing activities conducted under the interim final rule 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 would not result in any effects beyond those considered in the 1999 Biological Opinion and 2004 Incidental Take Statement.

### National Environmental Policy Act

NMFS prepared an Environmental Assessment (EA) for a final rule (70 FR 19004, April 12, 2005) to implement resolutions adopted by the IATTC and the IDCP. The Assistant Administrator for Fisheries concluded that fishing activities conducted under the 2004 final rule would not be expected to

result in significant effects on the human environment. This rule would not be expected to result in modifications to fisheries operations or effects on the human environment beyond those considered under the alternatives in the EA. This action has been categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement. A memo to the record was prepared for the proposed rule memorializing this decision and is available at the Federal E-rulemaking Portal Web site: <http://www.regulations.gov>. No comments were received regarding the categorical exclusion memo, and no further analyses were conducted under NEPA for this rule.

#### Marine Mammal Protection Act

Incidental take of dolphins and other marine mammals may occur during fishing operations by U.S. tuna purse seine vessels in the ETP. The take of dolphins incidental to the operation of the U.S. ETP tuna purse seine fishery is authorized and managed under the IDCP. This rule would not affect the administration of that program, which is implemented under the MMPA.

#### List of Subjects

##### 50 CFR Part 216

Fish, Marine mammals, Reporting and recordkeeping requirements.

##### 50 CFR Part 300

International fisheries regulations, Pacific tuna fisheries.

Dated: January 7, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, NMFS amends 50 CFR parts 216 and 300 as follows:

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

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

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

■ 2. In § 216.3, add definitions for “Albacore tuna”, “Bigeye tuna”, “Bluefin tuna”, “Longtail tuna”, “Skipjack tuna”, “Southern bluefin tuna”, “Tuna”, and “Yellowfin tuna” in alphabetical order to read as follows:

#### **§ 216.3 Definitions.**

\* \* \* \* \*

*Albacore tuna* means the species *Thunnus alalunga*.

\* \* \* \* \*

*Bigeye tuna* means the species *Thunnus obesus*.

*Bluefin tuna* means the species *Thunnus thynnus* or *Thunnus orientalis*.

\* \* \* \* \*

*Longtail tuna* means the species *Thunnus tonngol*.

\* \* \* \* \*

*Skipjack tuna* means the species *Euthynnus (Katsuwonus) pelamis*.

\* \* \* \* \*

*Southern bluefin tuna* means the species *Thunnus maccoyii*.

\* \* \* \* \*

*Tuna* means any fish of the genus *Thunnus* and the species *Euthynnus (Katsuwonus) pelamis*.

\* \* \* \* \*

*Yellowfin tuna* means the species *Thunnus albacares* (synonymy: *Neothunnus macropterus*).

■ 3. In § 216.24, redesignate paragraph (f)(8)(i)(D)(3)(iii) as paragraph (f)(8)(ii) and redesignate paragraphs (f)(8)(iv), (f)(8)(v), and (f)(8)(vi) as paragraphs (f)(8)(iii), (f)(8)(iv), and (f)(8)(v); and revise paragraphs (a)(3), (b)(4), (b)(5), (b)(6)(ii), (b)(6)(iii), (c)(3)(viii), (c)(4)(i), (f)(2), (f)(3), (f)(4), (f)(10), and (f)(11), to read as follows:

#### **§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.**

(a) \* \* \*

(3) Upon written request made in advance of entering the ETP, the limitations in paragraphs (a)(2)(ii) and (e)(1) of this section may be waived by the Administrator, Southwest Region, for the purpose of allowing transit through the ETP. The waiver will provide, in writing, the terms and conditions under which the vessel must operate, including a requirement to report to the Administrator, Southwest Region, the vessel's date of exit from or subsequent entry into the permit area.

(b) \* \* \*

(4) *Application for vessel permit.* ETP tuna purse seine vessel permit application forms and instructions for their completion are available from NMFS. To apply for an ETP vessel permit, a vessel owner or managing owner must complete, sign, and submit the appropriate form via fax to (562) 980-4047, for prioritization purposes as described under § 300.22(b)(4)(i)(D)(3) of this title, allowing at least 15 days for processing. To request that a vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active on the

Vessel Register under § 300.22(b)(4)(i) of this title in the following calendar year, the owner or managing owner must submit the vessel permit application via fax, payment of the vessel permit application fee, and payment of the vessel assessment fee no later than September 15 for vessels for which a DML is requested for the following year, and no later than November 30 for vessels for which a DML is not requested for the following year.

(5) *Application for operator permit.* An applicant for an operator permit must complete, sign, and submit the appropriate form obtained from NMFS and submit payment of the permit application fee to the Administrator, Southwest Region, allowing at least 45 days for processing. Application forms and instructions for their completion are available from NMFS.

(6) \* \* \*

(ii) *Operator permit fee.* The Assistant Administrator may require a fee to be submitted with an application for an operator permit. The level of such a fee shall be determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(iii) *Vessel assessment fee.* The vessel assessment fee supports the placement of observers on individual tuna purse seine vessels, and maintenance of the observer program, as established by the IATTC or other approved observer program.

(A) The owner or managing owner of a purse seine vessel for which a DML has been requested must submit the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than September 15 of the year prior to the calendar year for which the DML is requested. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(B) The owner or managing owner of a purse seine vessel for which active or inactive status on the Vessel Register, as defined in § 300.21 of this title, has been requested, but for which a DML has not been requested, must submit payment of the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than November 30 of the year prior to the calendar year in which the vessel will be listed on the Vessel Register. Payment of the vessel assessment fee is required only if the vessel is listed as active and is required to carry an

observer, or if the vessel is listed as inactive and exceeds 400 st (362.8 mt) in carrying capacity. Payment of the vessel assessment fee must be consistent with the vessel's status, either active or inactive, on the Vessel Register in § 300.22(b)(4) of this title.

(C) The owner or managing owner of a purse seine vessel that is licensed under the South Pacific Tuna Treaty must submit the vessel assessment fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, prior to obtaining an observer and entering the ETP to fish. Consistent with § 300.22(b)(1)(i) of this title, this class of purse seine vessels is not required to be listed on the Vessel Register under § 300.22(b)(4) of this title in order to purse seine for tuna in the ETP during a single fishing trip per calendar year of 90 days or less. Payment of the vessel assessment fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(D) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the vessel assessment fee associated with active status, less the vessel assessment fee associated with inactive status that was already paid, before NMFS will request the IATTC Director change the status of the vessel from inactive to active. Payment of the vessel assessment fee is required only if the vessel is required to carry an observer.

(E) The owner or managing owner of a purse seine vessel not listed on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the vessel assessment fee

associated with active status only if the vessel is required to carry an observer, before NMFS will request the IATTC Director change the status of the vessel to active.

(F) Payments will be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(E) of this section for vessels that were listed as active on the Vessel Register in the calendar year prior to the year for which active status was requested; or if received after the dates specified in paragraphs (b)(6)(iii)(A) or (b)(6)(iii)(B) of this section for vessels for which active status is requested if the vessel was listed as active during the year the request was made. Payments will not be subject to a 10 percent surcharge if received under paragraph (b)(6)(iii)(C) or (b)(6)(iii)(D) of this section, or if received under paragraph (b)(6)(iii)(E) of this section for vessels that were not listed as active on the Vessel Register in the calendar year prior to the year for which active status was requested. Payments will also not be subject to a 10 percent surcharge if received after the date specified in paragraph (b)(6)(iii)(B) of this section for vessels for which inactive status is requested, or for vessels for which active status is requested if the vessel was not listed as active during the year the request was made. The Administrator, Southwest Region, will forward all vessel assessment fees described in this section to the IATTC or to the applicable organization approved by the Administrator, Southwest Region.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(viii) *Lights.* The vessel must be equipped with long-range, high-intensity floodlights with a sodium lamp of at least 1000 watts, or a multivapour lamp of at least 1500 watts, for use in darkness to ensure sufficient light to observe that procedures for dolphin release are carried out and to monitor incidental dolphin mortality.

(4) *Vessel inspection*—(i) *Twice per year.* At least twice during each calendar year, purse seine nets and other gear and equipment required under § 216.24(c)(3) must be made available for inspection and for a trial set/net alignment by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region, in order to obtain a vessel permit. The first such inspection shall be carried out before the vessel's request for a DML is submitted to the IATTC. The second such inspection shall be carried out before notification of any reallocation of DMLs for vessels with full-year DMLs or during the last quarter of the year for vessels with second-semester DMLs.

\* \* \* \* \*

(f) \* \* \*

(2) *Imports requiring a Fisheries Certificate of Origin.* Shipments of tuna, tuna products, and certain other fish products identified in paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) of this section may not be imported into the United States unless a properly completed Fisheries Certificate of Origin (FCO), NOAA Form 370, is filed with U.S. Customs and Border Protection (CBP) at the time of importation.

(i) *Imports requiring a Fisheries Certificate of Origin, subject to yellowfin tuna embargo.* All shipments containing yellowfin tuna or yellowfin tuna products (other than fresh tuna) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following Harmonized Tariff Schedule of the United States (HTS) numbers. Updated HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at [www.usitc.gov](http://www.usitc.gov). The scope of yellowfin tuna embargoes and procedures for attaining an affirmative finding are described under paragraphs (f)(6) and (f)(8) of this section, respectively.

(A) *Frozen:* (products containing Yellowfin).

|                    |  |
|--------------------|--|
| 0303.42.0020 ..... | Yellowfin tunas, whole, frozen.  |
| 0303.42.0040 ..... | Yellowfin tunas, head-on, frozen, except whole.  |
| 0303.42.0060 ..... | Yellowfin tunas frozen, except whole, head-on, fillets, livers and roes.                               |
| 0304.29.6097 ..... | Tuna fish fillets, frozen, Not elsewhere specified or indicated (NESOI).                               |
| 0304.99.1090 ..... | Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NESOI. |

(B) *Airtight Containers:* (products containing Yellowfin).

|                    |   |
|--------------------|---|
| 1604.14.1010 ..... | Tunas and skipjack, in oil, in airtight containers, in foil or other flexible containers weighing with their contents not more than 6.8 kg each.        |
| 1604.14.1099 ..... | Tunas and skipjack, in oil, in airtight containers, NESOI.  |
| 1604.14.2291 ..... | Other tunas and skipjack, no oil, in foil/flexible airtight containers, not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year. |

|   |   |
|---|---|
| 1604.14.2299 .....                                  | Tunas, NESOI and skipjack, not in oil, in other airtight containers not over 7 kg, 4.8% of U.S. consumption of canned tuna during preceding year.         |
| 1604.14.3091 .....                                  | Tunas and skipjack, NESOI, not in oil, in foil or other flexible airtight containers, weighing with their contents not more than 6.8 kg each.             |
| 1604.14.3099 .....                                  | Other tunas and skipjack, not in oil, in airtight containers, NESOI.  |
| (C) <i>Loins</i> : (products containing Yellowfin). |   |
| 1604.14.4000 .....                                  | Tunas and skipjacks, prepared or preserved, not in airtight containers, not in oil, in bulk or immediate containers with their contents over 6.8 kg each. |
| 1604.14.5000 .....                                  | Tunas and skipjack, prepared or preserved, not in airtight containers, NESOI.   |
| (D) <i>Other</i> : (products containing Yellowfin). |   |
| 1604.20.1000 .....                                  | Fish pastes.  |
| 1604.20.2500 .....                                  | Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each.        |
| 1604.20.3000 .....                                  | Fish balls, cakes and puddings, NESOI.  |

(ii) *Imports requiring a Fisheries Certificate of Origin, not subject to yellowfin tuna embargo.* All shipments containing tuna or tuna products (other than fresh tuna or yellowfin tuna

identified in paragraph (f)(2)(i) of this section) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following HTS

numbers. Updated HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at [www.usitc.gov](http://www.usitc.gov).

(A) *Frozen*: (other than Yellowfin).

|                    |  |
|--------------------|--|
| 0303.41.0000 ..... | Albacore or longfinned tunas, frozen, except fillets, livers and roes.                                 |
| 0303.43.0000 ..... | Skipjack tunas or stripe-bellied bonito, frozen, except fillets, livers and roes.                      |
| 0303.44.0000 ..... | Bigeye tunas, frozen, except fillets, livers and roes.   |
| 0303.45.0000 ..... | Bluefin tunas, frozen, except fillets, livers and roes.  |
| 0303.46.0000 ..... | Southern bluefin tunas, frozen, except fillets, livers and roes.                                       |
| 0303.49.0100 ..... | Tunas, frozen, except fillets, livers and roes, NESOI.   |
| 0304.29.6097 ..... | Tuna fish fillets, frozen, NESOI.  |
| 0304.99.1090 ..... | Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NESOI. |

(B) *Airtight Containers*: (other than Yellowfin).

|                    |   |
|--------------------|---|
| 1604.14.1010 ..... | Tunas and skipjack, in oil, in airtight containers, in foil or other flexible containers weighing with their contents not more than 6.8 kg each.          |
| 1604.14.1091 ..... | Tunas, albacore, in oil, in airtight containers, NESOI.   |
| 1604.14.1099 ..... | Tunas and skipjack, in oil, in airtight containers, NESOI.  |
| 1604.14.2251 ..... | Albacore tuna, not in oil, in foil/flexible airtight containers, weighing not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year. |
| 1604.14.2259 ..... | Albacore tuna, not in oil, in airtight containers weighing not over 7 kg, NESOI, 4.8% of U.S. consumption of canned tuna during preceding year.           |
| 1604.14.2291 ..... | Other tunas and skipjack, no oil, in foil/flexible airtight containers, not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year.   |
| 1604.14.2299 ..... | Tunas, NESOI and skipjack, not in oil, in other airtight containers, not over 7 kg, 4.8% of U.S. consumption of canned tuna during preceding year.        |
| 1604.14.3051 ..... | Tuna, albacore not in oil, in foil or other flexible airtight containers, weighing with contents not more than 6.8 kg each, NESOI.                        |
| 1604.14.3059 ..... | Tuna, albacore not in oil, in airtight containers, NESOI.   |
| 1604.14.3091 ..... | Tunas and skipjack, NESOI, not in oil, in foil or other flexible airtight containers, weighing with their contents not more than 6.8 kg each.             |
| 1604.14.3099 ..... | Other tunas and skipjack, not in oil, in airtight containers, NESOI.  |

(C) *Loins*: (other than Yellowfin).

|                    |   |
|--------------------|---|
| 1604.14.4000 ..... | Tunas and skipjacks, prepared or preserved, not in airtight containers, not in oil, in bulk or immediate containers with their contents over 6.8 kg each. |
| 1604.14.5000 ..... | Tunas and skipjack, prepared or preserved, not in airtight containers, NESOI.   |

(D) *Other*: (only if the product contains tuna).

|                    |  |
|--------------------|--|
| 1604.20.1000 ..... | Fish pastes.   |
| 1604.20.2500 ..... | Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each. |
| 1604.20.3000 ..... | Fish balls, cakes and puddings, NESOI.   |

(iii) Exports from driftnet nations only, requiring a Fisheries Certificate of Origin and official certification. The following HTS numbers identify categories of fish and shellfish, in addition to those identified in paragraphs (f)(2)(i) and (f)(2)(ii) of this

section, known to have been harvested using a large-scale driftnet and imported into the United States. Shipments exported from a large-scale driftnet nation, as identified under paragraph (f)(7) of this section, and imported into the United States, including but not

limited to those imported into the United States under any of the HTS numbers listed in paragraph (f)(2) of this section, must be accompanied by an FCO and the official statement described in paragraph (f)(4)(xiii) of this section.

## (A) Frozen:

|              |   |
|--------------|---|
| 0303.19.0012 | Chinook (King) salmon ( <i>Oncorhynchus tshawytscha</i> ), frozen, except fillets, livers and roes.   |
| 0303.19.0022 | Chum (dog) salmon ( <i>Oncorhynchus keta</i> ), frozen, except fillets, livers and roes.  |
| 0303.19.0032 | Pink (humpie) salmon ( <i>Oncorhynchus gorbuscha</i> ), frozen, except fillets, livers and roes.  |
| 0303.19.0052 | Coho (silver) salmon ( <i>Oncorhynchus kisutch</i> ), frozen, except fillets, livers and roes.  |
| 0303.19.0062 | Pacific salmon ( <i>Oncorhynchus masou</i> , <i>Oncorhynchus rhodurus</i> ), frozen, except fillets, livers and roes, NESOI.  |
| 0303.21.0000 | Trout ( <i>Salmo trutta</i> ; <i>Oncorhynchus mykiss</i> , <i>clarki</i> , <i>aguabonita</i> , <i>gilae</i> , <i>apache</i> , and <i>chrysogaster</i> ), frozen, except fillets, livers and roes. |
| 0303.22.0000 | Atlantic salmon ( <i>Salmo salar</i> ) and Danube salmon ( <i>Hucho hucho</i> ), frozen, except fillets, livers and roes.   |
| 0303.29.0000 | Salmonidae, frozen, except fillets, livers and roes, NESOI.   |
| 0303.61.0010 | Swordfish steaks, frozen, except fillets.   |
| 0303.61.0090 | Swordfish, frozen, except steaks, fillets, livers and roes.   |
| 0303.75.0010 | Dogfish ( <i>Squalus</i> spp.), frozen, except fillets, livers and roes.  |
| 0303.75.0090 | Sharks, frozen, except dogfish, fillets, livers and roes.   |
| 0303.79.0079 | Fish, frozen, except fillets, livers and roes, NESOI.   |
| 0304.21.0000 | Swordfish fillets, frozen, NESOI.   |
| 0304.29.2066 | Fish fillets, skinned, frozen blocks weighing over 4.5 kg each, to be minced, ground or cut into pieces of uniform weights and dimensions, NESOI.   |
| 0304.29.6006 | Atlantic Salmonidae ( <i>Salmo salar</i> ) fillets, frozen, NESOI.  |
| 0304.29.6008 | Salmonidae fillets, frozen, except Atlantic salmon, NESOI.  |
| 0304.29.6099 | Fish fillets, frozen, NESOI.  |
| 0307.49.0010 | Squid fillets, frozen.  |
| (B) Canned:  |   |
| 1604.11.2020 | Pink (humpie) salmon, whole or in pieces, but not minced, in oil, in airtight containers.   |
| 1604.11.2030 | Sockeye (red) salmon, whole or in pieces, but not minced, in oil, in airtight containers.   |
| 1604.11.2090 | Salmon NESOI, whole or in pieces, but not minced, in oil, in airtight containers.   |
| 1604.11.4010 | Chum (dog) salmon, not in oil, canned.  |
| 1604.11.4020 | Pink (humpie) salmon, not in oil, canned.   |
| 1604.11.4030 | Sockeye (red) salmon, not in oil, canned.   |
| 1604.11.4040 | Salmon, NESOI, not in oil, canned.  |
| 1604.11.4050 | Salmon, whole or in pieces, but not minced, NESOI.  |
| 1604.19.2000 | Fish, NESOI, not in oil, in airtight containers.  |
| 1604.19.3000 | Fish, NESOI, in oil, in airtight containers.  |
| 1605.90.6050 | Loligo squid, prepared or preserved.  |
| 1605.90.6055 | Squid except Loligo, prepared or preserved.   |
| (C) Other:   |   |
| 0305.30.6080 | Fish fillets, dried, salted or in brine, but not smoked, NESOI.   |
| 0305.41.000  | Pacific salmon ( <i>Oncorhynchus</i> spp.), Atlantic salmon ( <i>Salmo salar</i> ), and Danube salmon ( <i>Hucho hucho</i> ), including fillets, smoked.  |
| 0305.49.4040 | Fish including fillets, smoked, NESOI.  |
| 0305.59.2000 | Shark fins, dried, whether or not salted but not smoked.  |
| 0305.59.4000 | Fish, dried, whether or not salted but not smoked, NESOI.   |
| 0305.69.4000 | Salmon, salted but not dried or smoked; in brine.   |
| 0305.69.5000 | Fish in immediate containers weighing with their contents 6.8 kg or less each, salted but not dried or smoked; in brine, NESOI.   |
| 0305.69.6000 | Fish, salted but not dried or smoked; in brine, NESOI.  |
| 0307.49.0022 | Squid, <i>Loligo opalescens</i> , frozen (except fillets), dried, salted or in brine.   |
| 0307.49.0024 | Squid, <i>Loligo pealei</i> , frozen (except fillets), dried, salted or in brine.   |
| 0307.49.0029 | Loligo squid, frozen (except fillets), dried, salted or in brine, NESOI.  |
| 0307.49.0050 | Squid, frozen (except fillets), dried, salted or in brine, except Loligo squid.   |
| 0307.49.0060 | Cuttle fish ( <i>Sepia officinalis</i> , <i>Rossia macrosoma</i> , <i>Sepiolo</i> spp.), frozen, dried, salted or in brine.   |

(3) *Disposition of Fisheries Certificates of Origin.* The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at <http://swr.nmfs.noaa.gov/noaa370.htm>.

(i) A properly completed FCO and its attached certificates as described in § 216.91(a), if applicable, must accompany the required CBP entry documents that are filed at the time of import.

(ii) FCOs and associated certifications as described in § 216.91(a), if any, that accompany imported shipments of tuna must be submitted by the importer of record to the Tuna Tracking and Verification Program, Southwest Region, within 10 calendar days of the shipment's entry into the commerce of the United States. FCOs submitted via mail should be sent to the Tuna Tracking and Verification Program, Southwest Region, P.O. Box 32469, Long Beach, CA 90832-2469. Copies of the documents may be submitted electronically using a secure file transfer protocol (FTP) site. Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program at the following email address: SWRTuna.Track@noaa.gov. The Tuna Tracking and Verification Program will facilitate secure transfer and protection of certifications by assigning a separate electronic folder for each importer. Access to the electronic folder will require a user identification and password. The Tuna Tracking and Verification Program will assign each importer a unique user identification and password. Safeguarding the confidentiality of the user identification and password is the responsibility of the importer to whom they are assigned. Copies of the documents may also be submitted via mail either on compact disc or as hard copies. All electronic submissions, whether via FTP or on compact disc, must be in Portable Document Format (PDF).

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be endorsed at each change in ownership and submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed.

(iv) Importers and exporters are required to retain their records, including FCOs, import or export documents, invoices, and bills of lading for 2 years, and such records must be made available within 30 days of a

request by the Secretary or the Administrator, Southwest Region.

(4) *Contents of Fisheries Certificate of Origin.* An FCO, certified to be accurate by the exporter(s) of the accompanying shipment, must include the following information:

- (i) CBP entry identification;
- (ii) Date of entry;
- (iii) Exporter's full name and complete address;
- (iv) Importer's or consignee's full name and complete address;
- (v) Species description, product form, and HTS number;
- (vi) Total net weight of the shipment in kilograms;
- (vii) Ocean area where the fish were harvested (ETP, western Pacific Ocean, south Pacific Ocean, north Pacific Ocean, eastern Atlantic Ocean, western Atlantic Ocean, Caribbean Sea, Indian Ocean, or other);
- (viii) Type of fishing gear used to harvest the fish (purse seine, longline, baitboat, large-scale driftnet, gillnet, pole and line/hook and line, or other);
- (ix) Country under whose laws the harvesting vessel operated based upon the flag of the vessel or, if a certified charter vessel, the country that accepted responsibility for the vessel's fishing operations;
- (x) Dates on which the fishing trip began and ended;
- (xi) The name of the harvesting vessel;
- (xii) Dolphin-safe condition of the shipment, described by checking the appropriate statement on the form and attaching additional certifications as described in § 216.91(a) if required;
- (xiii) For shipments containing fish or fish products exported from, or harvested on the high seas by vessels of a nation known to use large-scale driftnets, as determined by the Secretary pursuant to paragraph (f)(7) of this section, the High Seas Driftnet Certification contained on the FCO must be dated and signed by a responsible government official of the large-scale driftnet nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; and
- (xiv) Each importer, exporter, or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describes the shipment of fish that they accompany.

\* \* \* \* \*

(10) *Fish refused entry.* If fish is denied entry under paragraph (f)(2) of this section, the Port Director of CBP shall refuse to release the fish for entry into the United States.

(11) *Disposition of fish refused entry into the United States.* Fish that is

denied entry under paragraph (f)(2) of this section and that is not exported under CBP supervision within 90 days shall be disposed of under CBP laws and regulations at the importer's expense. Provided, however, that any disposition shall not result in an introduction into the United States of fish caught in violation of the MMPA.

\* \* \* \* \*

■ 4. In § 216.91, revise paragraphs (a)(2)(i), (a)(2)(ii), and (a)(4) to read as follows:

**§ 216.91 Dolphin-safe labeling standards.**

- (a) \* \* \*
- (2) \* \* \*

(i) In a fishery in which the Assistant Administrator has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the ETP), unless such products are accompanied as described in § 216.24(f)(3) by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) In any other fishery unless the products are accompanied as described in § 216.24(f)(3) by a written statement executed by the Captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna was harvested;

\* \* \* \* \*

(4) *Other fisheries.* By a vessel in a fishery other than one described in paragraphs (a)(1) through (a)(3) of this section that is identified by the Assistant Administrator as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied as described in § 216.24(f)(3) by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Assistant Administrator determines that such an observer statement is necessary.

\* \* \* \* \*

■ 5. In § 216.92, revise paragraph (b)(2)(ii) and the introductory text of paragraph (b)(2)(iii) to read as follows:

§ 216.92 Dolphin-safe requirements for tuna harvested in the ETP by large purse seine vessels.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) The tuna or tuna products are accompanied as described in § 216.24(f)(3) by a properly completed FCO; and

(iii) The tuna or tuna products are accompanied as described in § 216.24(f)(3) by valid documentation signed by a representative of the appropriate IDCP member nation, containing the harvesting vessel names and tuna tracking form numbers represented in the shipment, and certifying that:

\* \* \* \* \*

■ 6. In § 216.93, revise paragraphs (c)(5), (e), and (f)(2) to read as follows:

§ 216.93 Tracking and verification program.

\* \* \* \* \*

(c) \* \* \*

(5) The handling of TTFs and the tracking and verification of tuna caught in the Convention Area by a U.S. purse seine vessel greater than 400 st (362.8 mt) carrying capacity shall be conducted consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.

\* \* \* \* \*

(e) Tracking imports. All tuna products, except fresh tuna, that are imported into the United States must be accompanied as described in § 216.24(f)(3) by a properly certified FCO as required by § 216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 10 calendar days of the shipment's entry into the commerce of the United States as required by § 216.24 (f)(3)(ii).

(f) \* \* \*

(2) Record submission. Within 10 calendar days of receiving a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must submit to the Administrator, Southwest Region, all corresponding FCOs and required certifications for those tuna or tuna products.

\* \* \* \* \*

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Pacific Tuna Fisheries

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

Authority: 16 U.S.C. 951–961 et seq.

■ 8. In § 300.21, remove the definition for “Vessel Register” and add definitions for “Commercial passenger fishing vessel”, “Regional Administrator”, “Regional Vessel Register”, and “Tuna” in alphabetical order to read as follows:

§ 300.21 Definitions.

\* \* \* \* \*

Commercial passenger fishing vessel means any vessel licensed for commercial passenger fishing purposes within the State out of which it is operating and from which, while under charter or hire, persons are legally permitted to conduct sportfishing activities.

\* \* \* \* \*

Regional Administrator means the Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Regional Vessel Register (hereafter referred to as Vessel Register) means the regional register of vessels authorized to fish for tuna and tuna-like species in the Convention Area, as established by the Inter-American Tropical Tuna Commission in June 2000.

\* \* \* \* \*

Tuna means any fish of the genus Thunnus and the species Euthynnus (Katsuwonus) pelamis.

■ 9. In § 300.22, revise the section heading and paragraphs (a), (b) introductory text, and (b)(2), (b)(3), (b)(4), (b)(5)(iv), and (b)(7); and add new paragraphs (b)(5)(vi), (b)(5)(vii), (b)(5)(viii), and (b)(8) to read as follows:

§ 300.22 Eastern Pacific fisheries recordkeeping and written reports.

(a) The master or other person in charge of a commercial fishing vessel or commercial passenger fishing vessel (CPFV) authorized to fish for tuna and tuna-like species in the Convention Area, or a person authorized in writing to serve as the agent for either person, must keep an accurate log of operations conducted from the fishing vessel. For vessels greater than 400 st (362.8 mt) carrying capacity that are authorized to purse seine for tuna in the Convention Area, the log must include for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the

tonnage of fish on board, by species. The record and bridge log maintained and submitted at the request of the IATTC shall be sufficient to comply with this paragraph, provided the items of information specified by the IATTC are accurately entered in the log. For purse seine vessels of 400 st (362.8 mt) carrying capacity or less and for non-purse seine vessels, maintaining and submitting any logbook required by existing state or federal regulation shall be sufficient to comply with this paragraph.

(b) Vessel Register. The Vessel Register shall include, consistent with resolutions of the IATTC, all commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area. Except as provided under paragraph (b)(1) of this section, tuna purse seine vessels must be listed on the Vessel Register and categorized as active under paragraph (b)(4)(i) of this section in order to fish for tuna and tuna-like species in the Convention Area.

\* \* \* \* \*

(2) Requirements for inclusion of purse seine vessels on the vessel register. The tuna purse seine portion of the Vessel Register shall include, consistent with resolutions of the IATTC, only vessels that fished in the Convention Area prior to June 28, 2002. Inclusion on the tuna purse seine portion of the Vessel Register is valid through December 31 of each year. New tuna purse seine vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the tuna purse seine vessel or vessels being replaced.

(3) Vessel information. Information on each commercial fishing vessel or CPFV authorized to use purse seine, longline, drift gillnet, harpoon, troll, rod and reel, or pole and line fishing gear to fish for tuna and tuna-like species in the Convention Area for sale shall be collected by the Regional Administrator to conform to IATTC resolutions governing the Vessel Register. This information initially includes, but is not limited to, the vessel name and registration number; the name and business address of the owner(s) and managing owner(s); a photograph of the vessel with the registration number legible; previous vessel name(s) and previous flag (if known and if any); port of registry; International Radio Call Sign; vessel length, beam, and moulded depth; gross tonnage, fish hold capacity in cubic meters, and carrying capacity

in metric tons; engine horsepower; date and place where built; and type of fishing method or methods used. The required information shall be collected as part of existing information collections as described in this and other parts of the CFR.

(4) *Purse seine vessel register status.* For a purse seine vessel to be listed on the Vessel Register and to be categorized as either "active" or "inactive" in the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator the required permit applications, written notifications, and fees as described under § 216.24(b) of this title and under paragraphs (b)(4)(i) and (b)(4)(iii) of this section.

(i) *Active status.* As early as August 1 of each year, vessel owners or managing owners may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as active for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator the vessel permit application and payment of the permit application fee and vessel assessment fee. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator written notification including, but not limited to, a vessel photograph, the vessel information as described under paragraph (b)(3) of this section, and the owner or managing owner's signature and business telephone and fax numbers. If a purse seine vessel of 400 st (362.8 mt) carrying capacity or less is required by the Agreement on the IDCP to carry an observer, the vessel owner or managing owner must also submit payment of the vessel assessment fee to the Regional Administrator. Vessel permit applications and written notifications must be submitted by fax to (562) 980-4047. The Regional Administrator must receive the vessel permit application or written notification and payment of the permit application fee and vessel assessment fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application or written notification and payment of the vessel assessment fee and permit application

fee will be interpreted by the Regional Administrator as a request for a vessel to be categorized as active. The following restrictions apply to active status:

(A) The cumulative carrying capacity of all purse seine vessels categorized as active on the Vessel Register may not exceed 8,969 mt in a given year;

(B) A purse seine vessel may not be added to active status on the Vessel Register unless the captain of the vessel has obtained a valid operator permit under § 216.24(b)(2) of this title;

(C) Requests for active status will be prioritized according to the following hierarchy:

(1) Requests received for vessels that were categorized as active in the previous year, unless the request for active status was determined to be frivolous by the Regional Administrator under paragraph (b)(4)(ii) of this section;

(2) Requests received for vessels that were categorized as inactive under paragraph (b)(4)(iii) of this section in the previous year;

(3) Requests for vessels not described in paragraphs (b)(4)(i)(C)(1) or (2) of this section will be prioritized on a first-come, first-served basis according to the date and time stamp printed by the incoming fax machine upon receipt, provided that the associated vessel assessment fee is paid by the applicable deadline described in § 216.24(b)(6)(iii) of this title; and

(4) Requests received from owners or managing owners of vessels that were determined by the Regional Administrator to have made a frivolous request for active status under paragraph (b)(4)(ii) of this section.

(ii) *Frivolous requests for active status.* A request for active status under paragraph (b)(4)(i) of this section will be considered frivolous, unless as a result of force majeure or other extraordinary circumstances as determined by the Regional Administrator if, for a vessel categorized as active in a given calendar year,

(A) Less than 20 percent of the vessel's total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area; or

(B) The vessel did not fish for tuna at all in the Convention Area in that same year.

(iii) *Inactive status.* From August 1 through November 30 of each year, vessel owners or managing owners may request that purse seine vessels qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the following calendar year. To request a purse seine vessel in excess of 400 st

(362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator payment of the associated vessel assessment fee. Payment of the vessel assessment fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit by mail to the Regional Administrator a written notification including, but not limited to, the vessel name and registration number and the vessel owner or managing owner's name, signature, business address, and business telephone and fax numbers. Payment of the vessel assessment fee is not required for vessels of 400 st (362.8 mt) carrying capacity or less to be categorized as inactive. At any time during the year, a vessel owner or managing owner may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the remainder of the calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the Regional Administrator payment of the associated vessel assessment fee. To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the Regional Administrator written notification as described in this paragraph (payment of the vessel assessment fee is not required).

(5) \* \* \*

(iv) For failure to pay a penalty or for default on a penalty payment agreement resulting from a final agency action for a violation;

\* \* \* \* \*

(vi) If the vessel does not have a valid state registration or U.S. Coast Guard certificate of documentation;

(vii) For tuna purse seine vessels, upon receipt of written notification from the owner or managing owner of the intent to transfer the vessel to foreign registry and flag, as described in paragraph (b)(8) of this section; or

(viii) For tuna purse seine vessels, if the request for active status on the

Vessel Register has been determined to be a frivolous request.

\* \* \* \* \*

(7) *Procedures for replacing purse seine vessels removed from the Vessel Register.*

(i) A purse seine vessel in excess of 400 st (362.8 mt) carrying capacity that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner or managing owner of the vessel pays the vessel assessment fee associated with inactive status. A purse seine vessel of 400 st (362.8 mt) carrying capacity or less that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner or managing owner of the vessel submits written notification as described in paragraph (b)(4)(iii) of this section.

(ii) A purse seine vessel may be added to the Vessel Register and categorized as active in order to replace a vessel removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity of the active vessels does not exceed 8,969 mt and the owner submits a complete request under paragraph (b)(7)(iv) or (b)(7)(v) of this section.

(iii) After a purse seine vessel categorized as active is removed from the Vessel Register, the Regional Administrator will notify owners or managing owners of vessels categorized as inactive that replacement capacity is available on the active list of the Vessel Register. In the event that owners of inactive vessels do not request to replace a removed vessel, the Regional Administrator will notify owners of vessels eligible for, but not included on, the Vessel Register that replacement capacity is available on the active list of the Vessel Register.

(iv) Vessel owners or managing owners may request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the Regional Administrator written notification as described in paragraph (b)(4)(i) of this section and, only if the vessel is required by the Agreement on the IDCP to carry an observer, payment of the vessel assessment fee within 10 business days after submission of the faxed written notification. The replacement vessel will be eligible to be categorized as active on the Vessel

Register if it has a carrying capacity equal to or less than the vessel or vessels being replaced. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(v) Vessel owners or managing owners may request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the Regional Administrator the vessel permit application as described under § 216.24(b) of this title and payment of the vessel assessment fee and permit application fee within 10 business days after submission of the faxed vessel permit application for the replacement vessel. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel or vessels being replaced, and the captain of the replacement vessel possesses an operator permit under § 216.24(b) of this title. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(vi) The Regional Administrator will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

(8) The owner or managing owner of a purse seine vessel listed on the Vessel Register must provide written notification to the Regional Administrator prior to submitting an application for transfer of the vessel to foreign registry and flag. Written notification must be submitted by mail and received by the Regional Administrator at least 10 business days prior to submission of the application for transfer. The written notification must include the vessel name and registration number; the expected date that the application for transfer will be submitted; and the vessel owner or managing owner's name and signature. Vessels that require approval by the U.S. Maritime Administration prior to transfer of the vessel to foreign registry and flag will not be subject to the notification requirement described in this paragraph.

■ 10. In § 300.23, revise the section heading to read as follows:

**§ 300.23 Eastern Pacific fisheries – Persons and vessels exempted.**

\* \* \* \* \*

■ 11. In § 300.24, remove the semicolons at the end of paragraphs (b), (e), (f), and (g) and replace them with periods; remove “; or” at the end of paragraph (h) and replace it with a period; and add a new paragraph (j) to read as follows:

**§ 300.24 Prohibitions.**

\* \* \* \* \*

(j) Fail to provide written notification as described under § 300.22(b)(8) to the Regional Administrator at least 10 business days prior to submission of an application to transfer a purse seine vessel listed on the Vessel Register to foreign registry and flag, unless transfer of the vessel requires approval by the U.S. Maritime Administration.

■ 12. In § 300.25, revise paragraph (a), the heading for paragraph (e) and revise paragraph (e)(1) to read as follows:

**§ 300.25 Eastern Pacific fisheries management.**

(a) *Notification of IATTC recommendations and resolutions.* Fishery management resolutions made by the IATTC and approved by the Department of State will be promulgated in the **Federal Register** via appropriate rulemaking. The publication in the **Federal Register** will summarize the fishery management resolutions and respond to any public comments received by NMFS.

\* \* \* \* \*

(e) *Bycatch reduction measures—(1)* All purse seine vessels must retain on board and land all bigeye, skipjack, and yellowfin tuna brought on board the vessel after a set, except fish deemed unfit for human consumption for other than reason of size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire fish catch brought on board.

\* \* \* \* \*

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