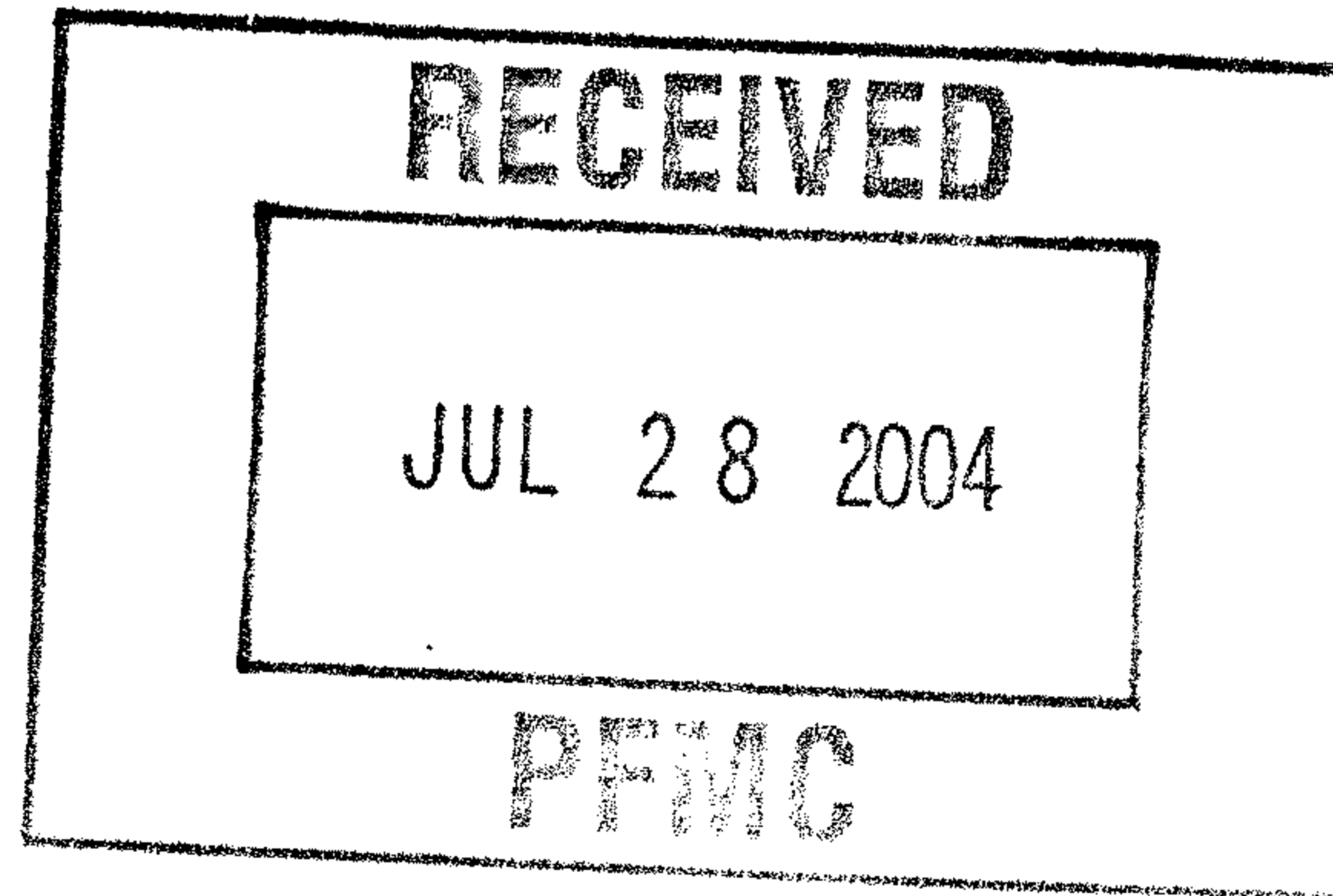


WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL

Agendum H.1
Attachment 3
September 2004

July 9, 2004

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



Dear Rod:

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

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

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

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

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

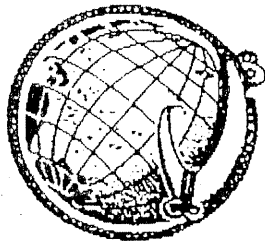
Thank you for the opportunity to comment on this proposed rule.

Sincerely,



Kitty M. Simonds
Executive Director.

cc: Bill Robinson
Bill Hogarth
Bill Gibbons-Fly
Sam Pooley



**WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL**

July 19, 2004

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

Dear Rod,

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

As referenced in my previous comments, we have received additional information from the Pacific Island Fisheries Science Center (PIFSC) on the volume of catches by US longliners within the IATTC convention area (east of 150 deg W). These data show that the selection of 2001 for the Hawaii as the target year for the IATTC resolution was unfortunate, since this year appears to have been the exception from the norm. The total annual US longline bigeye catch ranged from 106-216 mt/yr (average = 129 mt) in the IATTC convention area between 1999 and 2003 (see attached table). The lowest catch of 106 mt was taken in 2001. The contribution to this bigeye catch total from the Hawaii-based longline fleet over this period ranged from 52-171 mt (average = 162 mt), again with the lowest catch occurring in 2001.

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

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

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

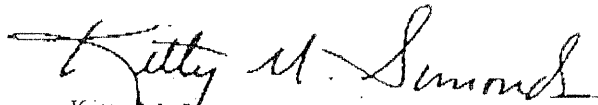
negatively affected by both the area closure and the quota. An Initial and Final Regulatory Flexibility Analysis (IRFA/FRFA) is required to present this information, analyze impacts, and discuss changes made to reduce these impacts. NMFS guidance on the preparation of these analyses should be followed.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

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

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

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

Sincerely,



Kitty M. Simonds
Executive Director

cc: Western Pacific Council Members
Hawaii Longline Association
Bill Hogarth

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

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

236.602-1 Selection criteria.

(a) Establish the evaluation criteria before making the public announcement required by FAR 5.205(c) and include the criteria and their relative order of importance in the announcement.

Follow the procedures at PGI 236.602-1.

236.602-2 and 236.602-4 [Removed]

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

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

236.604 Performance evaluation.

* * * * *

(c) * * *

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

[FR Doc. 04-14341 Filed 6-24-04; 8:45 am]

BILLING CODE 5001-08-P

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

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

RIN 0648-AS39

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

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

ACTION: Proposed rule; request for comments.

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

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

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

ADDRESSES: Comments on the proposed rule should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802 or by email to the Southwest Region at 0648-AS39@noaa.gov. Comments may also be submitted by email through the Federal e-Rulemaking portal: <http://www.regulations.gov>. Include in the subject line of the e-mail comment the following document identifier: 0648-AS39. Comments also may be submitted by fax to (562) 980-4047. Copies of the regulatory impact review/regulatory analysis may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90902-4213.

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

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

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

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

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

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

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

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

Classification

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

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

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

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on as substantial number of small entities as follows:

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

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

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

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: June 21, 2004.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 04–14473 Filed 6–24–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

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

RIN 0648–AR85

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

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

ACTION: Proposed rule; request for comments.

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

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

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

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

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

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