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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

RIN 0648-XD344

Fisheries Off West Coast States; Pacific Bluefin Tuna

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

ACTION: Notice of receipt of rulemaking petition to prohibit Pacific bluefin tuna fishing and request for comments.

SUMMARY: NMFS announces the receipt of, and request public comment on, a petition for rulemaking under the Administrative Procedure Act. The Center for Biological Diversity (CBD), a non-governmental organization, has petitioned the U.S. Department of Commerce to promulgate regulations to prohibit fishing for Pacific bluefin tuna and to identify specific reference points used to determine if overfishing is occurring or if the stock is overfished. The petition asserts that Pacific bluefin tuna are not adequately protected under the existing Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The petition also states that more robust international actions are necessary for ending overfishing of the stock. The petition seeks that NMFS take action to amend the HMS FMP and its implementing regulations for addressing domestic fishing on Pacific bluefin tuna. The petitioner also requests that NMFS develop recommendations to the Secretary of State to end overfishing of Pacific bluefin tuna at the international level, which would not be a rulemaking action.

DATES: Comments will be accepted through September 22, 2014.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2014-0076, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0076, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Mark Helvey, NMFS West Coast Region, 501 W. Ocean Blvd., Ste. 4200, Long

Beach, CA 90802. Attn: Pacific Bluefin Tuna.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the petition are available via the Federal e-Rulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2014-0076 or contact with the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Regional Office, 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115-0070, or *Regional Administrator.WCRHMS@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Mark Helvey, NMFS, 562-980-4040, mark.helvey@noaa.gov.

SUPPLEMENTARY INFORMATION:

Petition for Rulemaking

The petition submitted to the Department by CBD states that Pacific bluefin tuna is a highly migratory pelagic fish primarily distributed through the North Pacific Ocean. The petition notes that most of the stock occurring in the eastern side of the Pacific are juveniles. The petition also notes that the major countries fishing Pacific bluefin since 1952 are Japan, Mexico, Chinese-Taipei, and Korea while the U.S. participation has declined. The petition acknowledges that while the U.S. catch represents only a small portion of Pacific bluefin catch, that NMFS still has a duty to take the steps it can to slow or reduce overfishing. The petition argues that without immediate domestic protections, Pacific bluefin face irreversible and irreparable harm from ongoing overfishing. Further, the petitioner states that their proposed domestic actions can make an important contribution to ending overfishing of Pacific bluefin tuna.

The petition cites specific legal responsibilities of NMFS for addressing the overfishing and overfished status the agency has determined the stock is experiencing under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and cites the stated international overfishing provisions at section 304(i). This provision of the MSA applies to a fishery that the Secretary of Commerce has determined to be overfished, thereby requiring the appropriate fishery management council to develop recommendations for domestic regulations addressing the relative impact of U.S. fishing vessels on the stock and, if developed by a council, the council shall submit such recommendations to the Secretary. The petition asserts that Pacific Fishery Management Council has failed to meet its statutory duty to develop recommendations for domestic regulation in response to NMFS' determination. The petition also lists three specific international actions and requests that NMFS make recommendations regarding these actions to the Secretary of State and Congress. These actions fall outside the petitioner's request for rulemaking but are included in this notice as an opportunity to solicit public comment.

The petition specifically requests that NMFS promptly initiate rulemaking to amend the HMS FMP to address the impact of U.S. fishing vessels on Pacific bluefin tuna by taking the following measures:

"1. Prohibit fishing for Pacific bluefin tuna under 50 CFR 660.711(a). In the alternative, establish annual catch limits for bluefin tuna and a permanent minimum size requirement to protect age classes 1-2 from fishing mortality; and

"2. Identify specific values for reference points used to determine if overfishing is occurring or if the stock is overfished, such as maximum fishing mortality threshold and the minimum stock size threshold. 50 CFR 600.310(h)(2)(ii)."

If NMFS determines that rulemaking is appropriate, NMFS will notify the Pacific Fishery Management Council and recommend rulemaking through the council process.

Additional Requests Beyond Rulemaking

The Petitioner also requests that NMFS make recommendations to the Secretary of State and Congress (not a rulemaking) regarding international actions to end overfishing in the fishery and rebuild Pacific bluefin tuna

populations that include all of the below:

“1. A high seas moratorium on all fishing;

“2. A Pacific-wide minimum size for bluefin tuna catch; and

“3. A steep reduction in Pacific bluefin tuna quota for all countries to meet rebuilding targets based on established reference points.”

The exact and complete assertions of legal responsibilities under Federal law are contained in the text of Oceana’s petition, which is available via internet at the following web address: <http://www.regulations.gov>, docket NOAA–NMFS–2014–0076. Also, anyone may obtain a copy of this petition by contacting NMFS at the above address.

Request for Comments

The Assistant Administrator for Fisheries, NOAA has determined that the petition contains enough information to enable NMFS to consider the substance of the petition. Therefore, NMFS is issuing this notice to solicit comments and information on all rulemaking and non-rulemaking requests contained in the petition. NMFS is specifically requesting that the public provide comments on the social, economic, and biological impacts to aid NMFS in evaluating the request for rulemaking and in determining what action, if any, is appropriate. NMFS will consider public comments and recommendations received in determining whether to proceed with the development of the regulations

requested by the CBD. If NMFS determines that rulemaking is appropriate, NMFS will notify the Pacific Fishery Management Council and recommend rulemaking through the council process. Upon determining whether or not to initiate the requested rulemaking, the Assistant Administrator for Fisheries, NOAA, will publish in the **Federal Register** a notice of the agency’s final disposition of the Center for Biological Diversity’s petition request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 18, 2014.

Samuel D. Rauch III,

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

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