

EPA regulations. To date, EPA has not established a national policy (either through rulemaking or through non-binding guidance to assist in the interpretation of the bypass regulation) regarding whether and under what circumstances wet weather blending at a POTW plant would not constitute a bypass. Prior to today's action, permitting agencies have interpreted and applied the bypass regulation on a case-by-case basis according to the facts and circumstances presented by a particular POTW. Therefore, by today's action, EPA also invites comment on whether or not it should conduct rulemaking to implement the proposed policy, specifically, whether the Agency should revise the text of the regulations specifically to address the matters discussed in today's proposal.

Dated: November 3, 2003.

**G. Tracy Mehan, III,**

*Assistant Administrator, Office of Water.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 0310222265-3265-01; I.D. 092203E]

RIN 0648-AQ93

#### International Fisheries; Pacific Tuna Fisheries

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

**ACTION:** Proposed rule; 2003 management measures for tuna purse seine fisheries in the Eastern Pacific Ocean

**SUMMARY:** NMFS proposes this rule to implement the 2003 management measures to prevent overfishing of 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 the month of December, 2003. This action is taken to limit fishing mortality caused by purse seine fishing in that portion of the Convention Area and contribute to long-term conservation of

the tuna stocks at levels that support healthy fisheries.

**DATES:** Comments must be submitted in writing by November 19, 2003.

**ADDRESSES:** Copies of the regulatory impact review/regulatory analysis may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562-980-4040.

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/aces/aces140.html>.

**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. 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 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. The Convention Area is defined to include 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. Under the Tuna Conventions Act, NMFS must publish proposed rules to carry out IATTC recommendations that have been approved by DOS. The Southwest Regional Administrator, also is required by rules at 50 CFR 300.29(b)(3) to issue a direct notice to the owners or agents of all U.S. purse seine vessels that operate in the ETP of actions recommended by the IATTC and approved by the DOS.

At its annual meeting held on June 25-27, 2003, the IATTC provisionally adopted a resolution dealing with conservation of ETP tuna stocks. However, one Party to the IATTC indicated that it would have to obtain higher level concurrence before it could officially agree to those measures and ultimately indicated it could not agree. The IATTC then held another meeting October 6-7, 2003, and agreed to measures for 2003. The IATTC agreed to recommend that purse seine fishing for tuna be prohibited in December 2003 in

waters bounded by a line from the point where the 95° W. long. meridian intersects the west coast of the Americas, south to 10° S. 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 is a smaller closure than originally agreed to but will target fishing which has higher catches of juvenile tuna. Thus, there should be improved yields from the stocks later in the year. The IATTC action came after considering a variety of measures, including the use of quotas and partial fishery closures as in 1999, 2000, and 2001 and the full month purse seine closure used in 2002. In addition, the IATTC agreed to broader measures for 2004, which NMFS will consider in a future rulemaking, including a 6-week closure of all purse seine fisheries in the eastern Pacific Ocean beginning August 1, 2004, and limitation of longline fisheries to the bigeye tuna catch levels achieved in 2001. This approach should provide protection against overfishing of the stocks in a manner that is fair, equitable and readily enforceable. The DOS has approved this recommendation.

The proposed 2003 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 eastern Pacific Ocean, as well as records relating to implementation of quotas and closures in prior years. To ensure the continued health of the stocks, the IATTC recommended and the DOS approved a closure in a portion of the Convention Area for the month of December 2003. The closure is targeted to areas with high catches of bigeye tuna in the purse seine fishery and, together with agreed upon restriction for 2004, 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 recommended for 2004. 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 authorized by the Tuna Conventions Act, 16 U.S.C. 951–961 and 971 *et seq.*

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). 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 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. Therefore, NMFS has determined that additional consultation is not required for this action.

The eastern Pacific Ocean tuna purse seine fisheries occasionally interact with a variety of species of dolphin, and dolphin takes are authorized and managed under the IDCPA. These quotas do not affect the administration of that program, which is consistent with section 303(a)(2) of the Marine Mammal Protection Act (MMPA). Therefore, this rule is consistent with the MMPA.

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

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

The purpose of this action is to prohibit the use of purse seine gear to harvest tuna in a portion of the Convention Area in December 2003, consistent with the October 2003 IATTC recommendation. The closure is intended to promote conservation of tuna stocks by eliminating purse seine fishing

mortality by vessels from all parties to the IATTC. The proposed 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 generally 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). 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 in the U.S. exclusive economic zone most of the year for small pelagic fish (Pacific sardine, Pacific mackerel) and for market squid in the winter. However, some small vessels harvest tuna seasonally when they are available, usually late in the summer and early fall. The proposed time/area closure should have little effect on small vessels because there is little tuna fishing by small vessels in that time/area stratum. The small vessel fleet should not be affected by the time/area closure as the closed waters are out of the range of almost all the small vessels. In addition, the small vessels will be able to target market squid or sardine in December as is their normal pattern. As a result, an Initial Regulatory Flexibility Analysis was not prepared.

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

Dated: November 4, 2003.

**William T. Hogarth,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[I.D. 110303A]

RIN 0648–AR35

### Fisheries off West Coast States and in the Western Pacific; Notice of Availability of FMP Amendment

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

**ACTION:** Notice of availability of an amendment to a fishery management plan; request for comments.

**SUMMARY:** NMFS announces that the Pacific Fishery Management Council (Pacific Council) has submitted

Amendment 16–2 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for Secretarial review.

Amendment 16–2 would amend the FMP to include overfished species rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and Pacific ocean perch (POP). Amendment 16–2 is intended to address the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to protect and rebuild overfished species managed under a Federal FMP. Amendment 16–2 is also intended to partially respond to a Court order in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act.

**DATES:** Comments on Amendment 16–2 must be received on or before January 6, 2004.

**ADDRESSES:** Comments on Amendment 16–2 or supporting documents should be sent to D. Robert Lohn, Administrator, Northwest Region, National Marine Fisheries Service, Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070, attn: Becky Renko

Copies of Amendment 16–2 and the Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for the amendment are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Portland, OR 97220.

**FOR FURTHER INFORMATION CONTACT:** Becky Renko (Northwest Region, NMFS), phone: 206–526–6150; fax: 206–526–6736 and e-mail: [becky.renko@noaa.gov](mailto:becky.renko@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of the Federal Register: <http://www.gpoaccess.gov/fr/index.html>.

##### Background

The Magnuson-Stevens Act requires each regional fishery management council to submit fishery management plans or plan amendments to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires NMFS, immediately upon receiving a fishery management plan or plan amendment, to publish notification in the **Federal Register** that the fishery management plan or plan amendment is available for public review and comment. At the end of the comment period, NMFS considers the public comments received during the