DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 170815763–7999–01]

RIN 0648–BH13

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for Tropical Tuna in the Eastern Pacific Ocean for 2018 to 2020

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the Tuna Conventions Act to implement provisions included in Resolution C–17–02 (*Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean During 2018–2020*), which was adopted at the 92nd Meeting of the Inter-American Tropical Tuna Commission (IATTC or Commission) in July 2017. This proposed rule would implement the C–17–02 management measures for tropical tuna (*i.e.,* bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*)) for 2018 to 2020 in the eastern Pacific Ocean (EPO). The proposed rule would impose on purse seine vessels of class sizes 4–6 (carrying capacity greater than 182 metric tons (mt)) fishing for tropical tuna in the EPO: A 72-day closure, a 31-day area closure, and a requirement that—with some exceptions—all tropical tuna be retained and landed. In addition, this proposed rule would revise the restrictions for force majeure, establish a bigeye tuna catch limit of 750 mt for U.S. longline vessels greater than 24 meters (m) in overall length, and regulate the use of fish aggregating devices (FADs). This proposed rule is necessary for the conservation of tropical tuna stocks in the EPO and for the United States to satisfy its obligations as a member of the IATTC.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by December 14, 2017.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2017–0129, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0129,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rachael Wadsworth, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2017–0129'' in the comments.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. 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). Copies of the draft Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: *http://www.regulations.gov,* docket NOAA–NMFS–2017–0129, or by contacting the Regional Administrator, Barry A. Thom, NMFS West Coast Region, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232–1274, or *RegionalAdministrator.WCRHMS@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rachael Wadsworth, NMFS at 562–980–4036.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. In 2003, the IATTC adopted the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The Antigua Convention entered into force in 2010. The United States acceded to the Antigua Convention on February 24, 2016. The full text of the Antigua Convention is available at: *https://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf.*

The IATTC consists of 21 member nations and five cooperating non-member nations. It facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, sharks, and billfish stocks in the IATTC Convention Area to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

International Obligations of the United States Under the Antigua Convention

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951 *et seq.*) directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

IATTC Resolution on Tropical Tuna Conservation for 2018 to 2020

The IATTC adopted Resolution C–17–02 (*Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean During 2018–2020 and Amendment to Resolution C–17–02*) by consensus at its 92nd meeting in July 2017, in Mexico City, Mexico. Resolution C–17–02 includes provisions to revise Resolution C–17–01 for 2017, and also includes provisions for management measures for tropical tuna for 2018 to 2020. NMFS implemented 2017-specific measures in a separate rulemaking that published on September 29, 2017 (82 FR 45514). This proposed rule focuses on the tuna conservation measures for 2018 to 2020.

The intent of this Resolution is to manage fishing activities for tropical tuna stocks in the EPO and to address the recent increases in the purse seine fishing capacity in the IATTC Convention Area, which has the

potential to reduce production from tuna resources in the future if regulations are not implemented. Resolution C–17–02 includes provisions for purse seine and longline vessels fishing for tropical tunas in the IATTC Convention Area that apply from 2018 to 2020 and are described in more detail in the following paragraphs.

Resolution C–17–02 includes three provisions that were in effect for 2017 and that apply to purse seine vessels of class sizes 4–6 fishing for tropical tuna in the EPO. First, the Resolution C–17–02 maintains the requirement that each vessel must cease fishing for 72 days during one of the following two periods: July 29 to October 8, or from November 9 to January 19 of the following year. Second, the Resolution maintains the closure for purse seine vessels within the area of 96° and 110° W. and between 4° N. and 3° S. from 0000 hours on October 9 to 2400 hours on November 8. And third, the Resolution maintains the requirement that all tropical tuna be retained on board and landed, except fish considered unfit for human consumption for reasons other than size, as well as an exception on the final set of a trip, when there may be insufficient well space remaining to accommodate all the tuna caught in that set.

Resolution C–17–02 also revises provisions related to purse seine vessels requesting an exemption due to force majeure. The Commission previously defined force majeure in Resolutions C–13–01 and C–17–01 as a purse seine vessel that is disabled by mechanical and/or structural failure, fire and explosions. Resolution C–17–02 narrows the definition to situations where a vessel is disabled in the course of ''fishing operations.'' The revised definition would exclude situations where a vessel was rendered inoperable while not at sea, *e.g.,* fire in a shipyard, and situations where a vessel was in transit for purposes other than fishing operations. For situations where the Commission has approved an exemption due to force majeure, Resolution C–17–02 changes the number of days the purse seine vessel would need to observe the 72-day closure period from 30 days, as was in C–17–01, to 40 days. The reduced closure period could either be observed in the year the force majeure event occurred, or if the vessel already observed a 72-day closure period in the year the event occurred, the vessel could observe the reduced closure period the following year. The proposed action would also require that all class 4–6 purse seine vessels granted an exemption due to force majeure carry an observer.

Resolution C–17–02 removes two measures for 2018 to 2020 that were in effect for 2017. The provisions for 2018 to 2020 do not include the exception for allowing a purse seine vessel with a dolphin mortality limit to fish for 10 days during the closure period. The Commission had adopted this exception as a new measure for only 2017. In addition, Resolution C–17–02 removes a long standing provision that allowed purse seine vessels of class size 4 (*i.e.,* vessels with a carrying capacity between 182 and 272 mt) to make a single fishing trip of up to 30 days during the closure period, provided that any such vessel carries an observer.

Resolution C–17–02 also increases the U.S. annual catch limit for bigeye tuna in the IATTC Convention Area from 500 mt to 750 mt for longline vessels greater than 24 m in overall length. In addition, Resolution C–17–02 regulates for the first time the practice of IATTC members and cooperating non-members (CPCs) transferring longline catch limits for bigeye tuna. The previous IATTC resolutions on tropical tuna did not address transfers of longline catch. A few IATTC members reportedly transferred portions of their catch limits to other IATTC members, but there were no formal procedures for such transfers in the resolutions. The Commission adopted provisions to regulate any transfer to improve transparency and to increase the information collected about such transfers. Resolution C–17–02 specifies that no more than 30 percent of a CPCs catch limit may be transferred. Furthermore, a transfer may not be made retroactively to cover an overage of a catch limit for bigeye tuna and may not be retransferred to any other CPC. Ten days in advance of any transfer, both CPCs involved in a transfer must notify the IATTC (either separately or jointly). All notifications of a transfer of any catch limit must specify the tonnage to be transferred and the year in which the transfer will occur. Each CPC that receives a transfer would be responsible for management of the transferred catch limit, including monitoring and monthly reporting of catch.

Resolution C–17–02 also includes several new provisions on purse seine vessels fishing with FADs in the IATTC Convention Area. NMFS interprets the Resolution as differentiating between ''active FADs''—defined as a FAD that it is deployed at sea, starts transmitting its location, and is being tracked by the vessel—and non-active FADs that do not have equipment capable of transmitting their location. As explained herein, the Resolution includes requirements that apply solely to active FADs (*i.e.,* active FAD limits per vessel and monthly reporting), and requirements that apply to both active and non-active FADs (*e.g.,* deployment restrictions, removal restrictions, and materials to reduce entanglements). For long-term planning purposes, NMFS is seeking public comment on whether the industry needs the flexibility to continue deploying non-active FADs in the IATTC Convention Area or whether NMFS should prohibit the deployment of non-active FADs to facilitate monitoring of, and reporting on, FADs that have tracking equipment. The Resolution specifies that an active FAD may be activated only while it is onboard a purse seine vessel. The Resolution limits the number of active FADs that each purse seine vessel may have at any one time in the IATTC Convention Area: Class 6 vessels (1,200 cubic meters well volume and greater) may have up to 450 FADs; class 6 vessels (less than 1,200 cubic meters), up to 300 FADs; class 4–5 vessels, up to 120 FADs; class 1–3 vessels, up to 70 FADs.

To ensure compliance with the active FAD limits, the Resolution requires reporting on active FADs for each vessel in the IATTC Convention Area. The Resolution instructs the IATTC scientific staff and IATTC Permanent Working Group on FADs to develop, at the latest by November 30, 2017, guidance on the reporting of active FAD data in accordance with the Resolution. Vessel owners and operators must ensure that daily information on all active FADs in the IATTC Convention Area is recorded and the information must be reported at monthly intervals to the IATTC. To ensure confidentiality on any location information, these reports may be submitted with a time delay of at least 60 days but no later than 90 days.

The Resolution also includes restrictions on all FAD deployments and recovery in the IATTC Convention Area. The Resolution provides that purse seine vessels of class size 4–6 must ensure that FADs are not deployed during a period of 15 days prior to the start of the selected 72-day closure period. In addition, the Resolution provides that class 6 purse seine vessels (greater than 363 mt carrying capacity) must recover (*i.e.,* meaning remove from the water), within 15 days prior to the start of the selected closure period, a number of FADs equal to the number of FADs set upon during that same period.

In addition, the Resolution imposes design standards for all FADs to reduce the entanglement of marine life, *e.g.,* sharks and turtles, with FADs. Specifically vessel owners and operators are required to ensure that, as of January

1, 2019, all FADs are designed and deployed based on the principles set out in paragraphs 1 and 2 of Annex II in Resolution C–16–01 (*Amendment of Resolution C–15–03 on the Collection and Analyses of Data on Fish-Aggregating Devices*). These paragraphs describe materials that can be used for both the surface and subsurface structure of the FAD.

Proposed Regulations—Tuna Conservation Measures for 2018 to 2020

This proposed rule would implement the provisions of Resolution C–17–02 as described above. These proposed regulations would apply to U.S. commercial fishing vessels that are used to fish for tropical tuna stocks in the IATTC Convention Area. These proposed regulations would apply from 2018 to 2020. Per Resolution C–17–02, the proposed regulations would maintain three existing U.S. regulations for purse seine vessels, revise several existing regulations for both purse seine and longline vessels, and add several new regulations on transferring longline catch limits and FAD management. The proposed new regulations are further described below.

As described previously, there are several new provisions on transfers of bigeye catch limits for longline vessels. NMFS and U.S. Department of State would be responsible for arranging any transfers of a bigeye tuna catch limit for the United States with another IATTC CPC. Currently, the IATTC CPCs with which the United States could conduct a transfer, per paragraph 16 of Resolution C–17–02, include China, Japan, South Korea, and Chinese Taipei. NMFS would ensure that the total catch limit transferred either to the United States or from the United States would not exceed 30 percent of the catch limit designated to those CPCs or the United States by the IATTC. In addition, these transfers would not be allowed to be made to retroactively cover an overage of a U.S. catch limit for bigeye tuna. The United States would not be allowed to retransfer any of the transferred catch limit it receives from another CPC to another CPC.

Per requirements of the Resolution, NMFS will notify the IATTC of the transfer 10 days in advance, either separately or with the other CPC transferring catch. The notification would specify the tonnage to be transferred and the year in which the transfer would occur. NMFS will be responsible for the management of the transferred catch limit, including monitoring and monthly reporting of catch.

If the United States engages in a transfer of a bigeye tuna catch limit with another IATTC member, NMFS would publish a notice in the **Federal Register** announcing the new catch limit that is available to U.S. commercial fishing vessels that are over 24 meters in overall length. All restrictions described in 50 CFR 300.25 paragraphs (a)(1) and (a)(3) through (a)(4) would continue to apply.

In addition, the proposed regulations include several new restrictions on FADs in the IATTC Convention Area. The proposed regulations define the term ''Active FAD'' as a fish aggregating device that is equipped with gear capable of tracking location, such as radio or satellite buoys. An Active FAD would be considered active unless/until the tracking equipment is removed and the vessel owner or operator notifies NMFS Highly Migratory Species (HMS) Branch that this vessel is no longer active (*i.e.,* deactivated). With respect to limits on the number of Active FADs, all class 6 U.S. purse seine vessels on the IATTC Regional Vessel Register have a well volume of 1,200 m^3 or more. Therefore, these U.S. purse seine vessels would have a limit of 450 active FADs per vessel at any one time.

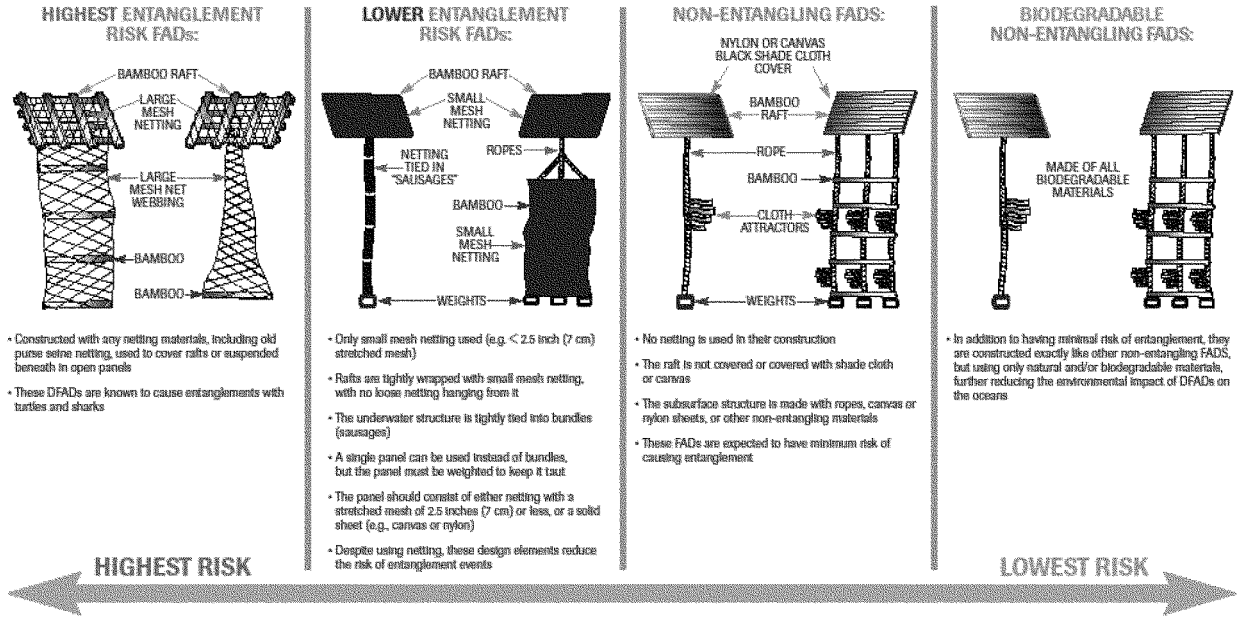
The proposed regulations would also require reporting on Active FADs in the IATTC Convention Area. U.S. vessels owners and operators would be required to maintain daily information on all Active FADs for each vessel in the IATTC Convention Area and report this information monthly to the address specified by NMFS HMS Branch. NMFS will distribute any guidance or templates developed by the IATTC FAD Working Group prior to the effective date of the final rule. These reports would be required to be submitted no later than 90 days after the month covered by the report. For example, reports covering the month of January 2018 could be submitted on or before May 1, 2018.

The proposed regulations also clarify that the reporting on FAD interactions, which is already required by regulations at 50 CFR 300.25(i), must be submitted within 30 days of each landing or transshipment of tuna or tuna-like species.

In addition, the proposed regulations include restrictions on FAD deployments and removals in the IATTC Convention Area. The proposed regulations specify that U.S. vessel owners, operators, and crew of purse seine vessels of class size 4–6 must ensure that FADs are not deployed during a period of 15 days prior to the start of the 72-day closure period selected by the vessel per 50 CFR 300.25(e)(1). In addition, the proposed regulations specify that U.S. vessel owners, operators, and crew of purse seine vessels of class size 6 (greater than 363 mt carrying capacity) must recover (*i.e.,* remove from the water) a number of FADs equal to the number of FADs set upon by the vessel during the 15 days prior to the start of the closure period selected by the vessel per 50 CFR 300.25(e)(1).

As described previously, Resolution C–17–02 includes broadly worded restrictions on the use of entangling material on FADs. In order to establish clear standards for FAD designs that meet the requirements of Resolution C–17–02, NMFS proposes to provide two options to meet the Resolution restrictions by following guidance developed by the International Seafood Sustainability Foundation (ISSF) in 2015 (available at*: https://iss-foundation.org/knowledge-tools/guides-best-practices/non-entangling-fads/download-info/issf-guide-for-non-entangling-fads/*). According to the ISSF Guide for Non-Entangling FADs (ISSF Guide), there are materials that range from highest risk of entanglement to lowest risk (*i.e.,* ''Biodegradable and Non-Entangling FADs''). This range of options is illustrated in Figure 1.

Figure 1. FAD designs and materials ranging from highest to lowest risk of entanglement according to ISSF Guide for Non-entangling FADs (available at: *https://iss-foundation.org/knowledge-tools/guides-best-practices/non-entangling-fads/download-info/issf-guide-for-non-entangling-fads/*).



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The proposed regulations would require that, no later than January 1, 2019, all FADs onboard or deployed by U.S. purse seine vessel owners and operators in the IATTC Convention Area are consistent with either the ''Lower Entanglement Risk FADs'' or ''Non-Entangling FADs'' as described in the ISSF Guide (*i.e.,* the two diagrams in the middle of Figure 1). For clarification, the diagrams in Figure 1 show bamboo rafts and bamboo hanging materials, which are not specific material requirements in the proposed regulations. As shown in the ISSF Guide (diagram farthest to the left in Figure 1), the ''Highest Entanglement Risk FADs'' include the use of large mesh netting (*i.e.,* greater than 7 centimeters (cm) or 2.5 inches (in)) that covers the raft and/or is hanging below the raft. Therefore, the use of these materials would be prohibited on FADs that are deployed on or after January 1, 2019, in the IATTC Convention Area. The diagram on the far right in Figure 1 uses biodegradable materials, and would be a permissible sub-alternative to the ''Non-Entangling FADs'' option.

The proposed regulations provide two options for vessel owners and operators and identifies materials that are acceptable in both the surface component of the FAD (*e.g.,* raft) and subsurface component of the FAD (*e.g.,* hanging material). If FADs are constructed in a manner consistent with either of these two options, this would meet the requirements of the proposed regulations.

To meet the requirements of the Non-Entangling FADs (see diagram third from left in Figure 1), the FAD would be required to be free from netting, and the raft would either not be covered at all or only covered with shade cloth or canvas. The subsurface structure would be made with ropes, canvas, or nylon sheets. Although biodegradable material is not required under Resolution C–17–02 or these proposed regulations, this option is presented for the purposes of discussion and to solicit public feedback. To meet the requirements of the Non-Entangling FAD plus the biodegradable option for a FAD (see diagram furthest to the right in Figure 1), the FAD would be constructed in the same manner as the previously described Non-Entangling FAD and the material would only include biodegradable materials. NMFS is considering definitions for biodegradable, but examples of biodegradable materials could include non-plastic and non-metal materials, as well as natural materials such as bamboo, palm leaves, coconut fiber or sisal fiber.

Alternatively, the ''Lower Entanglement Risk FADs'' (see diagram second from the left in Figure 1) would require that if netting is used for either the surface or subsurface components that only small mesh would be used (*i.e.,* 7 cm/2.5 in or less stretched mesh). If the raft is covered and small mesh netting is used, it must be tightly wrapped around the raft to avoid loose hanging netting. Any other covering must be comprised of shade cloth or canvas. Any small mesh netting used in the subsurface structure must be tightly tied into bundles (''sausages''), or formed into a panel that is weighted so as to keep it taut.

In addition, NMFS is soliciting the public for information on additional materials or configurations that have been demonstrated to reduce or avoid entanglements when used in FAD construction. Taking into account enforceability, NMFS will evaluate this input and consider including it in the final rule. NMFS acknowledges that additional materials may be recognized in the future that are effective at reducing or avoiding entanglement. Therefore, NMFS will update these regulations as appropriate.

Classification

After consultation with the Department of State and Homeland Security, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tuna Conventions Act of 1950, as amended, and other applicable laws, subject to further consideration after public comment.

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

NMFS is amending the supporting statement for the West Coast Region Pacific Tuna Fisheries Logbook and Fish Aggregating Device Form, Office of Management and Business (OMB) Paperwork Reduction Act (PRA) requirements (OMB Control No. 0648–0148) to include the data collection requirements for FADs as described in the preamble. NMFS estimates that the public reporting burden for this collection of information will average 3 minutes per form, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. NMFS requests any comments on the addition of the FAD data collection form to the PRA package, including whether the paperwork would unnecessarily burden any vessel owners and operators. Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a 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. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), 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. The rationale for the certification is provided in the following paragraphs.

As described in the **SUPPLEMENTARY INFORMATION** section, the proposed regulations would implement IATTC Resolution C–17–02, which would establish regulations for U.S. commercial fishing vessels fishing for tropical tuna in the IATTC Convention Area as detailed above. The objectives of the proposed action are: (1) To manage U.S. fishing activities for tropical tuna in the EPO for the benefit of maximizing harvests while avoiding overfishing, and (2) fulfilling the international obligations of the United States as a member of the IATTC.

The absence of the proposed rule action would allow U.S. fisheries to target tropical tuna stocks in the IATTC Convention Area without restrictions (except for existing permit requirements). This may contribute to overfishing conditions of tuna resources. Managing stocks at or above levels able to produce maximum sustainable yield is intended to benefit both the stocks and the fisheries in the EPO by allowing the production of the stocks to be maintained at levels where the largest catch can be taken overtime. Alternatively, the implementation of Resolution C–17–02 will result in the sharing of sustainable benefits from Pacific tuna fishery resources among the IATTC CPC countries. The entities directly affected by the actions of this proposed rule are: (1) U.S. purse seine vessels that fish for tuna or tuna-like species in the IATTC Convention Area, and (2) U.S. longline vessels greater than 24 meters in overall length that catch bigeye tuna in the IATTC Convention Area.

The United States Small Business Administration (SBA) defines a ''small business'' (or ''small entities'') as one with annual revenue that meets or is below an established size standard. On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. SBA current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194. The new standard results in fewer commercial finfish businesses being considered small.

NMFS prepared analyses for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial finfish fishing businesses. Under the new size standards, the U.S. purse seine vessels this action applies to are considered large and small businesses. The longline vessels this action applies to are considered to be small businesses.

There are two components to the U.S. tuna purse seine fishery in the EPO: (1) Large purse seine vessels of class size 6 that typically have been based in the western and central Pacific Ocean (WCPO), and (2) coastal purse seine vessels with smaller fish hold volumes (size class 2–3; between 46–181 mt carrying capacity) that are based on the U.S. West Coast. Although Resolution C–17–02 and the proposed regulations include restrictions for class size 4–5 (182–363 mt carrying capacity) purse seine vessels, there are no (nor have there been in the past ten years) any U.S. vessels of class sizes 4–5 registered to fish in the IATTC Convention Area. Therefore, the proposed regulations for class size 4–5 purse seine vessels are not expected to have any impact to U.S. vessel owners or operators.

As of September 2017, there are 17 class size 6 purse seine vessels registered to fish in the IATTC Convention Area. The number of U.S. size class 6 purse seine vessels on the IATTC Regional Vessel Register has increased substantially in the past two years due to previous uncertainty in the negotiations regarding the South Pacific Tuna Treaty and the interest expressed by vessel owners that typically fish in the WCPO in relocating to the EPO. From 2005 through 2014, three or fewer class 6 purse seine vessels fished in the Convention Area. In 2015 and 2016, fifteen and eighteen vessels fished in the Convention Area, respectively.

The U.S. class size 6 purse seine vessels target skipjack tuna by fishing on floating objects and unassociated sets; they also catch and retain yellowfin and bigeye tuna. Since at least 2005, the observer coverage rate on class size 6 vessels in the EPO has been 100 percent. In addition, one U.S. class 6 purse seine vessel has permission to fish on dolphins in 2017 and may be eligible to fish on dolphins in the future; but, this vessel could also fish on floating

objects and unassociated sets as it has done in the past. Previous to 2017, no U.S. purse seine vessel had fished on dolphins in over 10 years and NMFS does not yet have any catch data for this fishing activity.

For large purse seine vessels that fished exclusively in the EPO in 2015 and 2016, ex-vessel price information is not available to NMFS because these vessels did not land on the U.S. West Coast, and the cannery receipts are not available through the IATTC. However, estimates for large purse seine vessels based in the WCPO that fish in both the EPO and WCPO may be used as a proxy for U.S. large purse seine vessels. The number of these U.S. purse seine vessels is approximated by the number with Western and Central Pacific Fisheries Commission (WCPFC) Area Endorsements, which are the NMFS-issued authorizations required for a vessel to fish commercially for highly migratory species (HMS) on the high seas in the WCPFC Convention Area. As of October 2017, the number of purse seine vessels with WCPFC Area Endorsements was 37.

Based on (limited) financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that over half of the vessels in the purse seine fleet are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than $11 million. Within the purse seine fleet, analysis of average revenue, by vessel, for the three years of 2014–2016 reveals that average fleet revenue was $10,201,962; 22 participating vessels qualified as small entities with their average of the most recent three years of vessel revenue for which data is available of less than $11 million.

As of September 2017, the IATTC Regional Vessel Register lists 158 U.S. longline vessels that have the option to fish in the IATTC Convention Area, 37 of which are large-scale longline vessels (*i.e.,* greater than 24 m in overall length). The majority of these longline vessels have Hawaii Longline Limited Access Permits (issued under 50 CFR 665.13). Under the Hawaii longline limited access program, no more than 164 permits may be issued. The Hawaii longline fisheries include a tuna-targeting (including bigeye tuna) deep-set fishery and swordfish-targeting shallow set fishery. Since at least 2008, the observer coverage rates on shallow-set and deep-set longline vessels in the EPO have been a minimum of 100 and 20 percent, respectively. U.S. longline vessels fishing in the EPO have reached the 500 mt catch limit for bigeye tuna in 2013 to 2015 and in 2017.

In addition, there are U.S. longline vessels based on the U.S. West Coast, some of which operate under the Pacific HMS permit and high seas permits. U.S. West Coast-based longline vessels operating under the Pacific HMS permit fish primarily in the EPO and are currently restricted to fishing with deep-set longline gear outside of the U.S. West Coast EEZ. There have been fewer than three U.S. West Coast-based vessels operating under the HMS permit since 2005; therefore, landings and ex-vessel revenue are confidential. However, the number of Hawaii-permitted longline vessels that have landed in U.S. West Coast ports has increased from one vessel in 2006 to 18 vessels in 2016. In 2016, 928 mt of HMS (excluding striped marlin, pelagic thresher shark, and bigeye thresher shark) were landed into West Coast ports by Hawaii permitted longline vessels with total ex-vessel revenue of about $5.4 million. The average ex-vessel revenue for each vessel is approximately $302,222. This is well below the $11 million threshold for finfish harvesting businesses.

Economic Impacts

The proposed action is not expected to have a significant adverse economic impact on either the profitability of a substantial number of small entities or a disproportional economic effect on small entities relative to large entities. Under the new size standards, the entities impacted by the action related to purse seine vessels are considered large and small business, and the entities impacted by the action related to longline vessels are considered small business. However, disproportional economic effects between small and large businesses are not expected. Several proposed measures for 2018–2020 would maintain regulations that have been in place for years for tropical tuna management in the IATTC Convention Area; therefore, these actions are routine for the purse seine and longline fisheries. The proposed changes to the 2017 regulations include removing two regulations, revising two regulations, and adding several new regulations. These changes and the expected economic effects are discussed in more detail below.

Exception for dolphin fishing vessels: This proposed action would remove the exception that allowed vessels with DMLs to fish for ten days during the 72-day closure period. The Commission had adopted this temporary exemption for 2017 to provide additional flexibility to the DML vessels based on negotiations at the July 2017 IATTC meeting. As described above, only one U.S. purse seine vessel has a DML for 2017. It is currently unknown if the vessel will use this exemption in place for 2017. The exemption provided an optional additional economic benefit to DML vessels in 2017. Although removing this exemption may reduce the profitability of this particular vessel, the economic impacts are not expected to be substantial. Furthermore, the vessel would now be subject to the same restrictions as the other U.S. purse seine vessels that fish on FADs and unassociated sets and are subject to a 72-day closure. Therefore, no disproportionate impacts between small and large businesses are expected.

Exception for class 4 vessels: The proposed action to remove the regulation that allows purse seine vessels of class size 4 to make a single fishing trip of up to 30 days during the closure period is not expected to have any impact on U.S. purse seine vessels because there are no U.S. purse seine vessels of class size 4 registered to fish in the IATTC Convention Area.

Force Majeure: The proposed action would narrow the definition of force majeure to situations where a vessel is disabled at sea (except while transiting between ports on a trip during which no fishing operations occur). The proposed action would change the number of days the vessel would need to observe the 72-day closure from 30 days, as was in Resolution C–17–01, to 40 days, and would allow a reduced closure period to be observed the year following the force majeure event. The proposed action would also require that all class 4–6 purse seine vessels granted an exemption due to force majeure carry an observer. Because all class 6 U.S. purse seine vessels already carry observers under the requirements of the Agreement on the International Dolphin Conservation Program (AIDCP) and there are no class 4–5 U.S. purse seine vessels, this requirement will not impose additional restrictions on U.S. purse seine vessel owners or operators. The revised definition would exclude situations when something happened to the vessel while not at sea, *e.g.,* if the vessel caught on fire in a shipyard. Since 2013, when the force majeure provisions first went into effect, the United States has requested force majeure exemptions three times, one of which was for a situation that would be excluded under the current definition. Because force majeure events are rare and unpredictable, it is difficult to speculate future situations where a U.S. vessel would need to request force majeure. However, based on the

previous types of force majeure requests, the economic impacts are expected to be minor or none. The economic effects from reducing the number of days the vessel would need to observe the closure and allowing more flexibility in the year in which to observe a reduced closure period would have a positive economic impact for vessels that are granted an exemption due to force majeure. Nonetheless, this proposed measure is expected to provide some relief to purse seiners that experience an unforeseen circumstance and would otherwise have fewer days in a calendar year in which to fish.

Catch Limit: The proposed action maintains a bigeye tuna catch limit for longline vessels greater than 24 m in overall length; however, the proposed action included an increase from 500 to 750 mt specifically for the United States. The total allocated catch limits for IATTC members specified in the Resolution is 55,131 mt. The increase in U.S. catch limit of 250 mt represents 0.45 percent increase of the total catch limit. The IATTC staff estimated that this increase represents less than a 0.8 percent increase in fishing mortality for the EPO stock of bigeye tuna, which is currently estimated to not be experiencing overfishing or to be overfished. This increase may allow for additional flexibility and fishing opportunity for the U.S. longline fleet. Longline bigeye tuna catch limits have been in place since 2009 (Resolution C–09–01), and extending and increasing the U.S. catch limit would likely increase the profitability of the fishery. The proposed action is not expected to require any additional compliance effort or expense by affected vessels.

Transfer of catch limit: The proposed action also specifies the terms under which the U.S. could transfer (*e.g.,* receive or provide) bigeye tuna catch limit for longline vessels greater than 24 m. Although a few IATTC members reportedly transferred portions of their catch limits to other IATTC members in the past, there were no formal procedures for such transfers in the resolutions. To date, the United States has never engaged in transfers of bigeye tuna catch limits. The United States has no intention of providing any of its catch limit to another IATTC CPC. If there ever was a circumstance in the future where this would be considered (*e.g.,* if the U.S. longline fleet was no longer in fishing in the IATTC Convention Area), NMFS would evaluate the economic impacts of doing this through a separate economic analysis. It is more likely, although there is no plan for doing so at this time, that NMFS would receive a transfer of catch limit from another CPC in 2018 to 2020. If the United States did receive a transferred catch limit, it would be managed by NMFS the same way as the 750 mt catch limit is proposed to be managed by publishing the temporary increase in the catch limit in the **Federal Register** and monitoring the catch through logbooks. An increased catch limit would result in an economic benefit to the fishery and increased profitability. Because all affected longline vessels are considered small business, no disproportionate impacts between small and large entities of longline vessels would occur.

Fish Aggregating Devices (FADs): With respect to limits on Active FADs, all large U.S. purse seine vessels on the IATTC Regional Vessel Register have a well volume of 1,200 m^3 or more. Therefore, a limit of 450 Active FADs per large U.S. purse seine vessel at any one time would apply. According to information compiled by IATTC scientific staff from 2013–2015, most purse seine vessels fishing in the IATTC Convention Area deploy 300 or less FADs within a year (*https://www.iattc.org/Meetings/Meetings2016/Oct/Pdfs/_English/IATTC-90-INF-B-Add-1-Alternative-management-measures.pdf*). Although it is unknown how many Active FADs each U.S. purse seine vessel maintains at any given time, according to discussions between NMFS and U.S. industry representatives, it is not more than 450 FADs. Because this measure is not expected to reduce the number of Active FADs any U.S. purse seine vessel has in the water, this proposed rule is not expected to reduce the profitability of the fishery and no disproportionate impacts between small and large businesses are expected. In addition, although there is an additional reporting requirement for Active FADs, vessel operators are already expected to be collecting the necessary information and this is not expected to reduce profitability.

As described previously, the proposed action would prohibit FAD deployment 15 days in advance of the selected closure period. For those U.S. purse seine operators that typically deploy FADs before the closure period, this restriction could result in adjustments in fishing practices. For example, vessel operators that typically deploy FADs during that time period might choose to deploy more FADs at earlier dates before the closure or choose to deploy fewer FADs overall. In addition, the proposed action would require purse seine vessels to remove, within 15 days prior to the start of the selected closure period, a number of FADs equal to the number of FADs set upon by the vessel during that same period. Vessel operators that typically set on FADs fifteen days prior to the closure period may choose to adjust their fishing practices to not set on FADs, or to set on fewer FADs, within 15 days prior to the start of the selected closure period to avoid or reduce the number of FADs to remove. If vessel owners or operators make one set per day, they would need to remove 15 FADs to comply with this proposed regulation. For those vessel owners that remove FADs to comply with this regulation, it would be expected that they would pick up the FAD after making the set and there would be an additional time burden for vessel operators and crew to pull the FAD(s) out of the water. These proposed restrictions on FAD deployments and removals would not restrict the number of FADs in the water, but could change the amount of time vessel operators or crew engage in activities with FADs on the water. Thus, these measures are not expected to reduce the overall profitability of the fishery. Because all U.S. purse seine vessels fishing with FADs would be impacted in a similar manner, no disproportionate impacts between small and large businesses are expected.

The proposed action includes a range of options to comply with the restrictions on entangling materials on FADs in the IATTC Convention Area. Although information compiled by ISSF showed that the majority of the U.S. purse seine fleet currently use materials on FADs that have a high risk of entanglement (*e.g.,* hanging nets), according to discussions between industry representatives and NMFS, the purse seine fleet in the Pacific Ocean is in the process of transitioning to materials that do not have the highest risk of entanglement. This is a result of coordination between ISSF and U.S. industry and is expected to become effective in March 2018. Although there will likely be costs associated with this transition, which will vary depending on the materials available to the vessel and which materials the vessel uses, these measures are not expected to reduce the profitability of the fishery. Because all U.S. purse seine vessels fishing with FADs would be impacted in a similar manner, no disproportionate impacts between small and large businesses are expected. In addition, the effective date for this proposed action is January 1, 2019, which provides additional time for compliance with this measure.

With these additional restrictions on FADs, U.S. purse seine vessels will continue to have the option to fish on

unassociated sets throughout the IATTC Convention Area. In addition, depending on the level of flexibility for FAD regulations in the WCPO, U.S. purse seine vessels could also fish in the Area of Overlap without the IATTC restrictions on FADs. However, the other regulations in the Area of Overlap still apply, such as carrying an IATTC and WCPFC approved observer and being listed on the IATTC Regional Vessel Register per NMFS regulations published in 50 CFR 300.21 (definition of the Convention Area). The current regulations for the Area of Overlap could also change in the future.

In summary, the proposed action is not expected to substantially change the typical fishing practices of affected vessels. In addition, any impact to the income of U.S. vessels is expected to be minor. Therefore, NMFS has determined that the action is neither expected to have a significant economic impact on a substantial number of small entities nor to have a disproportional economic impact on the small entities relative to the large entities. Given these conclusions, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: November 8, 2017.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 300, subpart C, is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for 50 CFR part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

■ 2. In § 300.21, add a definition of ''Active FAD'' in alphabetical order and revise the definition for ''Force majeure'' to read as follows:

§ 300.21 Definitions.

* * * * *

Active FAD means, a fish aggregating device that is equipped with gear capable of tracking location, such as radio or satellite buoys. A FAD with this equipment shall be considered an Active FAD unless/until the equipment is removed and the vessel owner or operator notifies the HMS Branch that the FAD is no longer active (*i.e.,* deactivated).

* * * * *

Force majeure means, for the purpose of § 300.25, a situation in which a vessel at sea, except while transiting between ports on a trip during which no fishing operations occur, is disabled by mechanical and/or structural failure, fire or explosion.

* * * * *

■ 3. In § 300.22, the section heading and the paragraph heading for paragraph (a) are revised, and paragraph (a)(3) is added to read as follows:

§ 300.22 Recordkeeping and reporting requirements.

(a) *Logbooks and FAD data reporting.*

* * * * *

(3) *FAD data reporting for purse seine vessels.* (i) *Reporting on FAD interactions:* U.S. vessel owners and operators must ensure that any interaction or activity with a FAD is reported using a standard format provided by the HMS Branch. The owner and operator shall ensure that the form is submitted within 30 days of each landing or transshipment of tuna or tuna-like species to the address specified by the HMS Branch.

(ii) *Reporting on active FADs:* U.S. vessels owners and operators must record or maintain daily information on all Active FADs in the IATTC Convention Area in the format provided by the HMS Branch. The HMS Branch will distribute a template describing the information to report. This information must be reported for each calendar month for which Active FADs are deployed in the Convention Area, and submitted to the address specified by the HMS Branch. These reports must be submitted no later than 90 days after the month covered by the report.

* * * * *

■ 4. In § 300.24, revise paragraphs (m), (n), (ee), and (ff), and add paragraphs (ii) through (nn) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(m) Fail to stow gear as required in § 300.25(a)(4)(iv) or (e)(6).

(n) Use a fishing vessel of class size 4–6 to fish with purse seine gear in the Convention Area in contravention of § 300.25(e)(1), (e)(2), (e)(5) or (e)(6).

* * * * *

(ee) Fail to ensure characters of a unique code are marked indelibly on a FAD deployed or modified on or after January 1, 2017, in accordance with § 300.28(a)(2).

(ff) Fail to record or report data on FADs as required in § 300.22(a)(3).

* * * * *

(ii) Activate the transmission equipment attached to a FAD in a location other than on a purse seine vessel at sea as required in § 300.28(b).

(jj) Fail to turn on the tracking equipment for an Active FAD before deploying at sea as required in § 300.28(b).

(kk) Have more Active FADs than specified in § 300.28(c) in the IATTC Convention Area at any one time.

(ll) Deploy a FAD in the IATTC Convention Area during a period of 15 days prior to the start of the selected closure period in contravention of § 300.28(d)(1).

(mm) Fail to remove from the water a number of FADs in the IATTC Convention Area equal to the number of FADs set upon by the vessel during the 15 days prior to the start of the selected closure period as required in § 300.28(d)(2).

(nn) Deploy, or have onboard a vessel, a FAD in the IATTC Convention Area with non-authorized materials as required at § 300.28(e).

■ 5. In § 300.25:

■ a. Revise paragraphs (a)(1) and (2);

■ b. Add paragraph (a)(5);

■ c. Revise paragraphs (e)(1) through (3), and (e)(4)(ii);

■ d. Add paragraphs (e)(4)(iii) and (iv); and

■ e. Revise paragraphs (e)(5) and (6).

The additions and revisions read as follows:

§ 300.25 Fisheries management.

(a) * * *

(1) Fishing seasons for all tuna species begin on 0000 hours Coordinated Universal Time (UTC) January 1 and end either on 2400 hours UTC December 31 or when NMFS closes the fishery for a specific species.

(2) For the calendar years 2018, 2019, 2020, there is a limit of 750 metric tons of bigeye tuna that may be caught by longline gear in the Convention Area by U.S. commercial fishing vessels that are over 24 meters in overall length. The catch limit within a calendar year is subject to increase if the United States receives a transfer of catch limit from another IATTC member or cooperating non-member, per paragraph (a)(5) of this section.

* * * * *

(5) If the United States engages in a transfer of a bigeye tuna catch limit with another IATTC member or cooperating non-member, NMFS will publish a notice in the **Federal Register** announcing the new catch limit that is

available to U.S. commercial fishing vessels that are over 24 meters in overall length. All restrictions described in paragraphs (a)(1) and (a)(3) through (a)(4) of this section will continue to apply.

* * * * *

(e) *Purse seine closures.* (1) A commercial purse seine fishing vessel of the United States that is of class size 4–6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area for 72 days in each of the years 2018, 2019, and 2020 during one of the following two periods:

(i) From 0000 hours Coordinated Universal Time (UTC) July 29, to 2400 hours UTC October 8, or

(ii) From 0000 hours UTC November 9 to 2400 hours UTC January 19 of the following year.

(2) A vessel owner, manager, or association representative of a vessel that is subject to the requirements of paragraph (e)(1) of this section must provide written notification to the Regional Administrator declaring to which one of the two closure periods identified in paragraph (e)(1) of this section his or her vessel will adhere in that year. This written notification must be submitted by fax at (562) 980–4047 or email at *RegionalAdministrator.WCRHMS@noaa.gov* and must be received no later than July 1 prior to the first closure period within a calendar year. The written notification must include the vessel name and registration number, the closure dates that will be adhered to by that vessel, and the vessel owner or managing owner's name, signature, business address, and business telephone number.

(3) If written notification is not submitted per paragraph (e)(2) of this section for a vessel subject to the requirements under paragraph (e)(1) of this section, that vessel must adhere to the second closure period under paragraph (e)(1)(ii) of this section.

* * * * *

(4) * * *

(ii) If the request for an exemption due to force majeure is accepted by the IATTC, the vessel must observe a closure period of 40 consecutive days in the same year during which the force majeure event occurred, in one of the two closure periods described in paragraph (e)(1) of this section.

(iii) If the request for an exemption due to force majeure is accepted by the IATTC and the vessel has already observed a closure period described in paragraph (e)(1) of this section in the same year during which the force majeure event occurred, the vessel must observe a closure period of 40 consecutive days the following year the force majeure event occurred, in one of the two closure periods described in paragraph (e)(1) of this section.

(iv) Any purse seine vessel for which a force majeure request is accepted by the IATTC, must carry an observer aboard authorized pursuant to the International Agreement on the International Dolphin Conservation Program.

(5) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on October 9 to 2400 hours on November 8 in 2017 to fish with purse seine gear within the area bounded at the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude.

(6) At all times while a vessel is in a time/area closed period established under paragraphs (e)(1) or (e)(5) of this section, unless fishing under exceptions established under paragraphs (e)(4) of this section, the fishing gear of the vessel must be stowed in a manner as not to be readily available for fishing. In particular, the boom must be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any, must be tied down; and launches must be secured.

* * * * *

■ 5. Add § 300.28 to Subpart C to read as follows:

§ 300.28 Fish aggregating device restrictions.

(a) *FAD identification requirements for purse seine vessels.* (1) For each FAD deployed or modified on or after January 1, 2017, in the IATTC Convention Area, the vessel owner or operator must either: Obtain a unique code from HMS Branch; or use an existing unique identifier associated with the FAD (*e.g.,* the manufacturer identification code for the attached buoy).

(2) U.S. purse seine vessel owners and operators shall ensure the characters of the unique code or unique identifier be marked indelibly at least five centimeters in height on the upper portion of the attached radio or satellite buoy in a location that does not cover the solar cells used to power the equipment. For FADs without attached radio or satellite buoys, the characters shall be on the uppermost or emergent top portion of the FAD. The vessel owner or operator shall ensure the marking is visible at all times during daylight. In circumstances where the on-board observer is unable to view the code, the captain or crew shall assist the observer (*e.g.,* by providing the FAD identification code to the observer).

(b) *Activating FADs for purse seine vessels.* A vessel owner, operator, or crew shall deploy an Active FAD only while at sea and the tracking equipment must be turned on while the FAD is onboard the vessel and before being deployed in the water.

(c) *Restrictions on Active FADs for purse seine vessels.* U.S. vessel owners and operators of purse-seine vessels with the following well volume (m^3) or fish hold capacity (mt) must not have more than the following number of Active FADs per vessel in the IATTC Convention Area at any one time:

Well volume (m^3)	Carrying capacity (mt)	Active FAD limit
1,200 or more	1,408 or more	450
435–1,199	510–1,407	300
213–425	182–363	120
0–212	0–181	70

(d) *Restrictions on FAD deployments and removals.* (1) U.S. vessel owners, operators, and crew of purse seine vessels of class size 4–6 (more than 182 metric tons carrying capacity) must not deploy a FAD during a period of 15 days prior to the start of the selected closure period described in § 300.25(e)(1).

(2) U.S. vessel owners, operators, and crew of purse seine vessels of class size 6 (greater than 363 metric tons carrying capacity) must remove from the water a number of FADs equal to the number of FADs set upon by the vessel during the 15 days prior to the start of the closure period selected by the vessel per § 300.25(e)(1).

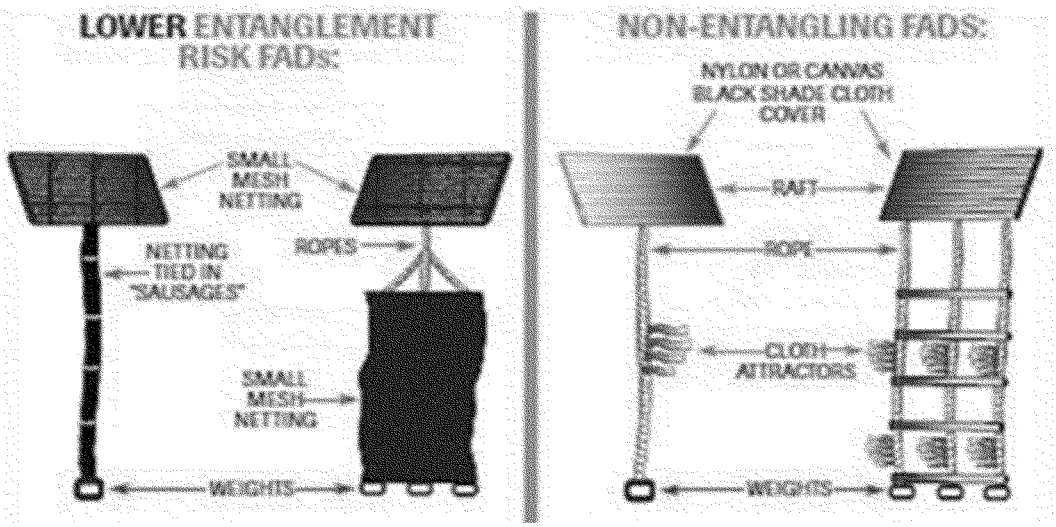
(e) *FAD design to reduce entanglements.* No later than January 1, 2019, all FADs onboard or deployed by U.S. vessel owners, operators, or crew, must comply with the surface (*e.g.,* raft) and subsurface component terms of either paragraph (e)(1)(i) or (e)(1)(ii) of this section. The use of netting with a mesh size greater than 7 centimeters/2.5 inches stretched mesh is prohibited on all parts of a FAD.

(1) Non-Entangling FADs must not include netting on any parts of the FAD, and the raft must either not be covered or covered with shade cloth or canvas. The subsurface structure must be made with ropes, canvas, or nylon sheets (diagram on the right in Figure 1 to paragraph (e)(2)).

(2) Lower Entanglement Risk FADs may use small mesh netting (mesh may not exceed 7 centimeters/2.5 when stretched) for either the surface or subsurface components. If the raft is

covered and small mesh netting is used, it must be tightly wrapped around the raft with no loose netting hanging from it. Any other covering on the raft must be comprised of shade cloth or canvas. Any small mesh netting used in the subsurface structure must be tightly tied into bundles (''sausages''), or formed into a panel that is weighted so as to keep it taut (diagram on the left in Figure 1 to paragraph (e)(2)).

Figure 1. Diagrams of FADs constructed to be Lower Entanglement Risk FADs and Non-Entangling FADs, based on the International Seafood Sustainability Foundation Guide for Non-Entangling FADs.



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