

recording method is approved for use with covered demodulator products.

(2) If an objection is raised within twenty (20) days after the date of public notice of the filing of a proponent's certification alleging that such certification contains insufficient information to evaluate the appropriateness of the underlying digital output protection technology or recording method for use with covered demodulator products, the proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. The Commission shall determine whether to dismiss the certification without prejudice or to undertake a full review of the certification's merits pursuant to paragraph (d) of this section.

(3) If an objection is raised within twenty (20) days after the date of public notice of the filing of a proponent's certification alleging that the underlying digital output protection technology or recording method is inappropriate for use with covered demodulator products, the proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. The Commission shall undertake a full review of the certification's merits pursuant to paragraph (d) of this section. In such cases, the Commission shall issue a determination indicating whether the underlying digital output protection technology or recording method is approved for use with covered demodulator products.

(d) *Commission determinations.* Where the Commission undertakes a full review of the merits of a certification for a digital output protection technology or recording method, the Commission may consider, where applicable, the following factors:

(1) Technological factors including but not limited to the level of security, scope of redistribution, authentication, upgradability, renewability, interoperability, and the ability of the digital output protection technology to revoke compromised devices;

(2) The applicable licensing terms, including compliance and robustness rules, change provisions, approval procedures for downstream transmission and recording methods, and the relevant license fees;

(3) The extent to which the digital output protection technology or recording method accommodates consumers' use and enjoyment of unencrypted digital terrestrial broadcast content; and

(4) Any other relevant factors the Commission determines warrant consideration.

(e) *Revocation of approval.* (1) If the security of a content protection technology or recording method approved for use in covered demodulator products has been compromised, a person may seek revocation of such approval pursuant to § 76.7 of this chapter.

(2) Petitioners seeking revocation of a content protection technology or recording method's approval for use in covered demodulator products shall articulate in detail the extent to which the content protection or recording technology has been compromised and demonstrate why alternative measures are insufficient to address the breach in security.

#### **§ 73.9009 Manufacture for exportation.**

The requirements of this subpart do not apply to demodulators, covered demodulator products or peripheral TSP products manufactured in the United States solely for export.

### **PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

■ 4. The authority citation for part 76 continues to read as follows:

**Authority** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 571, 572, and 573.

■ 5. Add new § 76.1909 to read as follows:

#### **§ 76.1909 Redistribution control of unencrypted digital terrestrial broadcast content.**

(a) For the purposes of this section, the terms unencrypted digital terrestrial broadcast content, EIT, PMT, broadcast flag, covered demodulator product, and marked content shall have the same meaning as set forth in § 73.9000 of this chapter.

(b) *Encrypted Retransmission.* Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content in encrypted form, such distributor shall, upon demodulation of the 8-VSB, 16-VSB, 64-QAM or 256-QAM signal, inspect either the EIT or PMT for the broadcast flag, and if the broadcast flag is present:

(1) Securely and robustly convey that information to the consumer product used to decrypt the distributor's signal information, and

(2) Require that such consumer product, following such decryption, protect the content of such signal as if it were a covered demodulator product receiving marked content.

(c) *Unencrypted Retransmission.* Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content in unencrypted form, such distributor shall, upon demodulation:

(1) Preserve the broadcast flag, if present, in both the EIT and PMT; and  
(2) Use 8-VSB, 16-VSB, 64-QAM, or 256-QAM signal modulation for the retransmission.

(d) *Unmarked Content.* Where a multichannel video programming distributor retransmits unencrypted digital terrestrial broadcast content that is not marked with the broadcast flag, the multichannel video programming distributor shall not encode such content to restrict its redistribution.

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## **DEPARTMENT OF COMMERCE**

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

#### **50 CFR Part 300**

[Docket No. ; 031022265-3293-02; 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:** Final rule; 2003 management measures for tuna purse seine fisheries in the Eastern Pacific Ocean.

**SUMMARY:** NMFS announces final 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 is prohibited in a portion of the Convention Area for the month of December, 2003. This action is taken to limit the impact of the purse seine fishery on bigeye tuna which are taken with yellowfin tuna in these waters and thus reduce the potential for overfishing.

**DATES:** The time and area closure is in effect from 0001 hours December 1, 2003, through 2400 hours December 31, 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.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register's** Web site at <http://www.access.gpo.gov/su-docs/aces/aces140.html>.

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 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 publishes rules to carry out IATTC recommendations that have been approved by the Department of State (DOS). Under 50 CFR 300.29(b)(3), the Southwest Regional Administrator, NMFS, also issues direct notices 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 a meeting held on October 6-7, 2003, the IATTC agreed to a tuna fishery conservation and management measure 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 W. 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 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 recommended 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. The assessments indicate that the stocks are healthy. 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 recommended for 2004 and 2005 with respect to longline fishing. The 2004 measures, when implemented, will include 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. 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.

On October 10, 2003, the Acting Regional Administrator, Southwest Region, sent a notice 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.

**Comments and Responses**

No comments were received during the comment period for the proposed rule (68 FR 63052, November 7, 2003), which ended November 19, 2003.

**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 final 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 final 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 final 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 rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule. No comments were received regarding the economic impacts of this action. As a result, no regulatory flexibility analysis was prepared.

The Assistant Administrator for Fisheries finds good cause, pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date of this final rule as failure to implement the closure as recommended by the IATTC could reduce the ability of the United States to promote full and complete compliance with IATTC recommendations by all parties as well as non-parties to the IATTC. This would jeopardize the continued effectiveness of the IATTC measures to conserve and manage the stocks under its purview.

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

Dated: November 28, 2003.

**Rebecca Lent,**

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

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