

### 15. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to "expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment." EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law."

Today's proposed rule implements section 103 of the MPRSA which requires that permits for dredged material are subject to EPA review and concurrence. The proposed rule would amend 40 CFR 228.15 by establishing the RISDS. As such, this proposed rule would afford additional protection of aquatic organisms at individual, population, community, or ecosystem levels of ecological structures. Therefore, EPA expects today's proposed rule would advance the objective of the Executive Order to protect marine areas.

#### List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: April 16, 2004.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

In consideration of the foregoing, EPA is proposing to amend part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

#### PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by removing and reserving paragraphs (b)(1), and (b)(2), and by adding and reserving paragraphs (b)(3) and (b)(4) (*currently proposed for LIS Sites*); and adding paragraph (b)(5) to read as follows:

#### § 228.15 Dumping sites designated on a final basis.

\* \* \* \* \*

(b) \* \* \*

(5) Rhode Island Sound Disposal Site (RISDS)

(i) *Location:* Corner Coordinates (NAD 1983): 41°14'21" N, 71°23'29" W; 41°14'21" N, 71°22'09" W; 41°13'21" N, 71°23'29" W; 41°13'21" N, 71°22'09" W.

(ii) *Size:* 1 square nautical mile.

(iii) *Depth:* range from 32 to 39 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 300 and 600

[Docket No. 040423129-4129-01; I.D. 041404D]

RIN 0648-AQ22

#### International Fisheries Regulations; Pacific Tuna Fisheries

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations necessary to implement the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges (Treaty) as authorized by recently passed legislation. The proposed rule would establish vessel marking, recordkeeping, and reporting requirements for U.S. albacore tuna fishing vessel operators and vessel marking and reporting requirements for Canadian albacore tuna fishing vessel operators fishing under the Treaty. The intended effect of this proposed rule is to allow the United States to carry out its obligations under the Treaty by allowing fishing by both U.S. and Canadian vessels as provided for in the Treaty.

**DATES:** Comments must be submitted by May 17, 2004.

**ADDRESSES:** Comments on the proposed rule should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long

Beach, CA 90802 or by e-mail to the Southwest Region at 0648-AQ22@noaa.gov. Comments may also be submitted by e-mail through the Federal e-Rulemaking portal: <http://www.regulations.gov>. Include in the subject line of the e-mail comment the following document identifier: 0648-AQ22. Comments also may be submitted by fax to (562) 980-4047. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) are available from Svein Fougner at the NMFS address. Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Svein Fougner, Assistant Administrator for Sustainable Fisheries, NMFS, Southwest Region and to David Rostker, OMB, by e-mail at [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by facsimile (fax) to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, (562) 980-4030; fax: (562) 980-4047; and e-mail: [svein.fougner@noaa.gov](mailto:svein.fougner@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Treaty, as amended in 2002, establishes a number of obligations of the Parties (the United States and Canada) to control reciprocal fishing in the waters of one Party by vessels of the other Party as well as reciprocal port privileges. The Treaty permits fishing vessels of one Party to fish for albacore tuna in waters under the fisheries jurisdiction of the other Party seaward of 12 nautical miles from the baseline from which the territorial sea is measured (hereafter generally referred to as "waters"). The Treaty originally allowed for unlimited fishing for albacore tuna by vessels of each Party in waters of the other Party. The Treaty was negotiated to allow reciprocal fishing and port calls in selected ports at a time when Canada asserted jurisdiction over highly migratory species such as tuna out to 200 nautical miles from its coastlines, while the U.S. did not recognize or assert a comparable claim to jurisdiction over highly migratory species off its coasts. (U.S. law was subsequently amended to accept jurisdiction by coastal states over highly migratory species in their 200-nautical mile Exclusive Economic Zones.)

Initially, vessels of both countries regularly fished in each other's waters, but fishing patterns subsequently changed, as albacore were found more frequently in U.S. waters than in Canadian waters. As a result, Canadian vessels continued to fish regularly in

U.S. waters most years, while it was comparatively rare for U.S. fishers to fish significantly in Canadian waters. Beginning in 1998, Canada sharply increased its fishing effort in U.S. waters from its historical average of about 75 vessels to 200 or more vessels a year. This was due at least partly to a shift into the albacore industry by displaced Canadian salmon vessels. U.S. fishing in Canadian waters, however, did not increase during this period.

In 2000, the U.S. albacore fishing industry complained to the Departments of State (DOS) and Commerce that U.S. fishing grounds were overcrowded by the enlarged Canadian fleet fishing in U.S. waters, and that Canadian fishers were receiving disproportionate benefits under the Treaty. Many fishers called for termination of the Treaty if the number of Canadian vessels fishing in U.S. waters was not cut back.

In response to the U.S. fishing industry request, and after consultation with NMFS and U.S. fishing and seafood processing industries, DOS initiated technical discussions with Canada to develop data on the fishery and share U.S. industry concerns. In early 2001, a negotiating team, led by DOS and including NMFS and industry representatives, entered into negotiations with Canada to amend the Treaty to provide a mechanism for setting a reciprocal limitation on the fishery conducted in each other's waters under the Treaty. The aim of the negotiations was not only to cut back the Canadian fishing effort to acceptable levels, but also to develop a system that could respond to future efforts by each Party to implement domestic and international conservation and management measures for the stock in its own waters. Implementation of such management measures could be difficult if unlimited fishing in each other's waters were permitted under the Treaty. The United States is now implementing a Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP), which includes albacore, and Canada has likewise developed and is implementing such a management plan.

Agreement to amend the Treaty was reached on April 24, 2002. The U.S. Senate has given its advice and consent to the Treaty amendments, and Congress enacted H.R. 2584 (Pub. L. 108-219) on March 29, 2004, to authorize the Secretary of Commerce to issue regulations to implement the amended Treaty. The President signed H.R. 2584 into law on April 13, 2004, thereby enacting Pub. L. No. 108-219. The amendment to Article 1(b) of the Treaty allows for the United States and Canada

to establish a mutually agreed upon fisheries limitation regime applicable to each Party's vessels fishing for albacore in the other Party's waters. Pursuant to that provision, the United States and Canada agreed to an initial limitation regime which is set out in a new Annex C. It is a 3-year regime that reduces the fishing effort each year until a level is reached in year three that is slightly above the pre-1998 average. Annex C also provides for a further reduced level of fishing after the 3-year period if the Parties are not able to reach agreement on a subsequent regime. The structure of the regime and its placement in Annex C provide the mechanism for readjustment of the fishing limitation by agreement by an exchange of diplomatic notes rather than Treaty amendments to more easily accommodate changing conservation and fishery management needs. If necessary, any such changes will be implemented through future rulemaking actions. Article VII of the Treaty provides that any Annex may be amended by executive agreement. The specific actions that are called for under the Treaty and would be implemented through this proposed rule are:

#### **Vessel Lists**

As under the original Treaty, each Party will provide annually to the other Party a list of its fishing vessels which may fish for albacore tuna in the other Party's waters. The list includes:

- (a) Vessel name;
- (b) Home port;
- (c) A vessel identification marking (number and letter combination) that identifies the flag state of the vessel;
- (d) Fishing vessel registration number, and
- (e) Captain or operator's name, if known.

Each Party may provide the other Party with additions or deletions to its list at any time. As soon as possible after receipt, the receiving Party shall satisfy itself that the list received from the other Party provides the required information and shall inform the other Party in order to enable the albacore fishery by those vessels to proceed pursuant to the Treaty. A U.S. vessel must be on the list for at least 7 days prior to engaging in fishing under the Treaty. This is intended to ensure that both the U.S. and Canada have equal information as to eligible vessels, and U.S. and Canadian enforcement offices can obtain lists of eligible vessels that are up to date to facilitate enforcement.

#### **Vessel Marking**

When in the fishing zone of the other Party, each vessel must have its name and vessel identification marking

(typically the U.S. Coast Guard documentation number or state registration number), followed by a letter code (U for U.S. vessels and C for Canadian vessels) prominently displayed where they will be clearly visible both from the air and from a surface vessel.

#### **Hail-in and Hail-out**

To the extent required by either Party, the operator of any albacore fishing vessel must provide the vessel name, vessel identification number, captain or operator's name and the purpose for being in such Party's fishing zone prior to entering and leaving the waters in which fishing is permitted (*i.e.*, waters under the fisheries jurisdiction of the other Party seaward of 12 nautical miles from the baseline from which the territorial sea is measured for the purpose of fishing).

#### **Recordkeeping**

Operators of vessels of both Parties must keep accurate logbook records of catch and effort while fishing pursuant to the Treaty and must provide to its government statistics and other scientific information on its operations in the fishing zone of the other Party.

#### **Information Exchange**

Each Party will annually monitor the amount of fishing and the weight of albacore tuna caught by its vessels in waters under the fisheries jurisdiction of the other Party, and will annually provide this information to the other Party. The information will be exchanged by the Parties on an annual basis and at least 30 days prior to the annual consultations (*see below*). Other specific information to be provided, as well as the forms and procedures for providing such information, will be agreed upon by the two Parties.

#### **Annual Treaty Consultations**

The United States and Canada will consult annually to:

- (a) Discuss data and information on albacore tuna fisheries exchanged under the Treaty, and
- (b) Exchange information on their respective conservation and management measures for albacore tuna and on implementation of internationally agreed conservation and management measures applicable to the Parties related to fisheries covered under the Treaty.

#### **Notification of Management Laws and Regulations**

The Parties will also notify one another of the conservation and management laws and regulations

applicable to vessels fishing in each other's waters.

### Limitation of Fishing Effort

Annex C of the Treaty limits the level of fishing that vessels of one Party can conduct in fishing for albacore tuna in the other Party's waters, beginning on June 1 of the first year of implementation of the limitation program. The limit can be exercised in terms of either the maximum number of vessels that can fish under the Treaty for up to 4 months each in a year; or the maximum number of fishing months that vessels can conduct in a year without a limit on the number of vessels that can participate in the year. Each Party would be free to choose the method of application. For purposes of monitoring fleet activity and counting fishing against the limitation, a "vessel fishing month" is defined as any calendar month or part thereof in which a U.S. vessel is in the waters subject to the fisheries jurisdiction of Canada for the purpose of fishing for albacore tuna under the Treaty.

NMFS has chosen to apply the limit in terms of vessel fishing months. This is administratively the simplest approach and provides maximum flexibility to U.S. vessels to engage in fishing in Canadian waters if the fish are there. Other methods would be more complex as they could require establishing the specific vessels that could participate or limiting vessel participation to a monthly total limit to spread out the fishing opportunity. This is unnecessary given recent years' levels of U.S. fishing in Canadian waters.

During the first year, the limit on fishing by U.S. vessels in Canadian waters will be 680 vessel fishing months; during the second year, the limit will be 560 vessel fishing months; and during the third year, the limit will be 500 vessel fishing months.

In the event that, in any year, U.S. fishing effort in Canadian waters is less than the annual maximum set out above, the unused portion of that year's maximum may be carried forward and added to the maximum for any subsequent year, provided that the resulting level of fishing effort in any one year does not exceed the maximum for the preceding year. That is, a "carry over" by year 3 could not be fully applied that year if this would allow more fishing than the year 2 limit.

It should be noted that the Treaty does not affect rights of U.S. vessels, including fishing vessels, to transit Canadian waters. However, Canadian hail-in requirements will continue to apply to transiting vessels, and with respect to albacore fishing vessels,

fishing gear must be stowed in an unfishable condition to prevent the vessel from being considered to be "fishing" under the Treaty.

### Extension or Adjustment of Fishing Limits

Prior to the expiration of this 3-year effort limitation program, the Parties will consult to consider a new limitation program or extension of this program for 1 or more years. If no agreement is reached by the Parties by the expiration of the program, then Parties may fish in future years at a level no more than 75 percent of the limitation applicable during the last year. Thus, the limits under this provision would be up to 375 vessel months without a limit on the number of vessels that are active, or 94 vessels with up to 4 months fishing by each vessel. However, if there were any carryover available from a previous year, fishing could be permitted up to the limit of year 3 above (125 vessels or 500 fishing months). These limits would apply until a new agreement is reached.

The intent of this program is to ensure that neither Party receives disproportionate benefits from the fishing opportunities provided by the Treaty and that neither Party's fishermen will be disadvantaged relative to the other Party's fishermen under the Treaty.

To carry out this agreement, NMFS proposes to establish the following requirements for U.S. albacore fishing vessel owners and operators:

1. *Vessel List.* As noted above, the U.S. and Canada exchange lists of vessels eligible to fish under the Treaty. The owner of any albacore fishing vessel who wants that vessel to be on the list of U.S. vessels eligible to fish for albacore tuna in Canadian waters under the Treaty must provide to NMFS the vessel name, the vessel registration number (U.S. Coast Guard documentation number or, if not documented, the state registration number), the home port, and the captain or operator's name. A vessel is not eligible to fish for albacore tuna in Canadian waters if it is not on the U.S. vessel list. This information must be provided not less than 7 days prior to engaging in fishing for albacore tuna in Canadian waters. This will provide time for information to be provided to U.S. and Canadian enforcement and management staff to facilitate vessel tracking and enforce compliance with the Treaty limits. Each list is only valid for a single calendar year.

2. *Vessel Marking.* A U.S. vessel eligible to fish for albacore tuna in Canadian waters must be marked with

the name and vessel identification marking prominently displayed where they will be clearly visible both from the air and from a surface vessel. The letter "U" must be painted or otherwise securely affixed to the vessel and be positioned at the end of each appearance on the vessel of its U.S. Coast Guard Documentation number (or if not documented, the state registration number) in the same height and size as the numerals.

Regulations at 50 CFR 660.704 implementing the HMS FMP establish vessel marking size requirements relative to the size of the vessel involved; the U would be the same size as the numerals for each vessel under those regulations.

3. *Logbook Reports.* The owner of a U.S. albacore fishing vessel is responsible for ensuring that a logbook of catch and effort covering fishing under the Treaty is maintained and submitted to the Southwest Region, NMFS, within 15 days of the end of the trip if the vessel re-enters U.S. waters or enters the Canadian territorial sea or other Canadian waters in which fishing is not permitted; or within 7 days of landing of fish if the vessel entered the high seas after exiting the Canadian EEZ. NMFS will provide the logbook form upon being advised of the owner's request to be placed on the list of eligible vessels as described above. Regulations at 50 CFR 660.708 establish logbook requirements for fisheries under the HMS FMP; the reporting requirement under this proposed rule complements the HMS FMP rule.

4. *Hail-in/Hail-out Reports.* The operator of a U.S. vessel eligible to fish for albacore tuna in Canadian waters may not enter Canadian waters to fish unless he has first contacted appropriate authorities to advise them of this intent. NMFS is contracting for a call-in system to support U.S. reporting requirements. Reports will be acceptable through single sideband radio, landline and cell telephone, fax, and e-mail. NMFS will provide detailed information to U.S. vessel operators of the appropriate times for reporting and the contractor contact points (phone numbers, radio frequencies, and e-mail addresses) to all owners or operators identified on the list of eligible vessels.

NMFS and the U.S. Coast Guard will use all available means to inform fishers of closures of the fishery in Canadian waters in a timely manner. This will include use of Notice to Mariners, a hotline on current information relative to fishing limits, fax notices, and Internet and Web page notices. A closure notice also will be published in the **Federal Register**. Other means may

be developed with the industry in the future.

The proposed rule also would add a new § 600.530 to the foreign fishing regulations at 50 CFR part 600, subpart F. This will reinforce Canadian regulations to govern the activity of Canadian vessels and ensure adequate ability to enforce the regulations and prosecute violations.

The DOS has concurred with issuance of this proposed rule as required by Public Law 108-219.

### Classification

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from NMFS (see ADDRESSES). A summary of the IRFA follows.

The proposed rule would not likely have significant effects on U.S. vessels that are active in the troll albacore fishery off the West Coast and on the high seas, all of which are considered small entities. About 800 vessels made landings of albacore into U.S. ports or transshipped albacore to foreign ports in 2003, with a total estimated catch of just under 15,000 metric tons (mt). Average annual albacore catches have been about 12,000 mt for the past 10 years. The amount of fishing in Canadian waters has been quite low; NMFS estimates that between 1 and 2 percent of total U.S. fishing effort (estimated at about 25,000 days per year) has been conducted in Canadian waters the past 10 years. The Treaty limitations are not expected to affect either the amount of fishing by U.S. vessels or their albacore catches in future years off the West Coast, in Canadian waters, or on the high seas. There are no catch limits under the Treaty or these implementing regulations. If Canadian fishing in U.S. waters declines through the effort limitation regime, there may be less competition on fishing grounds in U.S. waters, but it does not appear (though it is not certain) that there would be any effects on U.S. vessels' effort or catches or on subsequent revenues and profits in the fishery.

The principal impacts of the proposed rule are reporting burdens (see following discussion of Paperwork Reduction Act burdens). The monetary cost of these burdens is estimated to be less than \$30 per year for any U.S. vessel that participates in fishing under the Treaty.

NMFS considered the following alternatives to the proposed approach: (a) To establish a U.S. limited entry program by which to carry out the U.S. effort limitation regime using "vessel years" as the operating limit; and (b) to

establish monthly effort limits (*i.e.*, one-fifth of the annual limit each month in the months of June through October each year) to implement the effort limitation regime on a vessel month basis. The former would be administratively more complex than the proposed approach. It would require establishing either a lottery by which eligible vessels might be selected or criteria (*e.g.*, prior participation) by which the requisite number of vessels would be identified as being eligible to fish in the year; issuing specific licenses or permits for fishing under the Treaty to those vessels; and then evaluating the effects and effectiveness of the program and possibly refining it the next year.

The latter would also be more complex and less flexible than the proposed approach. It could support enforcement of the program by ensuring that there would not be an excessive flood of vessels into Canadian waters in any one month. However, it also would increase the potential that the U.S. would not be able to carry out as much fishing as legally permitted under the Treaty, since unused vessel months in one month would not carry over to the following month (which is the practical effect of the proposed approach).

Thus the proposed action was chosen for administrative ease, maximum flexibility to the fleet, and ability to enforce and administer at relatively low cost.

Neither of the alternatives (nor the proposed rule) would be likely to substantially affect the fishing effort and catch and revenue of the U.S. albacore fishery. As noted above, U.S. vessels have not fished extensively in Canadian waters for many years, and the U.S. fleet is not expected to fish at levels permitted under the Treaty. Thus the form of the limitation used should not result in changes in fishing effort, catches or revenue.

The proposed rule establishes reporting burdens subject to the Paperwork Reduction Act (PRA). The vessel marking requirement consists of adding the letter "U" after the vessel marking number required under regulations at 50 CFR 660.704 if the vessel enters Canadian waters. This is estimated to take 5 minutes per vessel. It is expected that all of the U.S. vessels that would fish under the Treaty are subject to the HMS FMP and/or the High Seas Fishing Compliance Act, both of which require vessel marking, and the added cost (adding the letter U) under this proposed rule is minimal. Given the limits of the amended Treaty, the maximum number of times the added burden would occur in the 3 year period is 1,740 vessel crossings, or 580

per year, with a burden of 48.33 hours annualized.

The proposed rule would require that vessel owners or operators take action each year to be sure that their vessels are on the list of vessels eligible to fish in Canadian waters under the Treaty. This can be done with a 5 minute phone call. Although it is highly unlikely, it is assumed for estimating the reporting burden that 700 vessels will get on the list (this is about 90 percent of the number of vessels that actually landed albacore into a West Coast port in 2003); under this assumption, the total fleet burden is 58.33 hours. It should be noted that there is no cost to get on the list; therefore, it is expected that many will choose to get on the list just in case an opportunity to fish in Canadian waters arises during the year. The proposed rule also will require U.S. vessels to report border crossings to and from Canadian waters. Assuming a round trip for the maximum of 580 vessels (assuming that every vessel fishes only 1 month toward the U.S. limit), and with each call taking an average of 5 minutes, this imposes a burden of 96.67 hours. Finally, the proposed rule would impose a logbook reporting requirement for U.S. vessels fishing under the Treaty in Canadian waters. Under the limits of the Treaty, U.S. vessels will be limited to an average of no more than 580 vessel months per year (over 3 years). Assuming full fishing each month (*i.e.*, up to 30 days per month) and 1 logbook page per day (at 5 minutes per page), the reporting burden will be 2.5 hours per vessel per month or a fleet total of 1450 hours per year. It is estimated that 50 percent of these vessels already participate in a voluntary albacore fishery logbook program, so the net new burden for which PRA approval has been requested is 725 hours.

Most years there will be much less fishing under the Treaty than the level on which this estimate is based. However, assuming full participation, the total new reporting burden for the fleet is 928.33 hours per year for the first 3 year period of fishing limits. There are no significant capital or equipment costs associated with this reporting burden. NMFS is working with the albacore fishery to evaluate the potential of electronic recordkeeping and reporting for this fishery. This could reduce the collection burden in the future. A PRA clearance request has been submitted to the Office of Management and Budget with this proposed rule.

Public comment is sought regarding whether these proposed collections of information are 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 information technology. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to, Svein Fougner, Assistant Administrator for Sustainable Fisheries, NMFS, Southwest Region (see ADDRESSES) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or facsimile (fax) to (202) 395-7285.

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 requirement of the PRA, unless that collection of information displays a currently valid OMB control number.

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

NMFS conducted a formal Endangered Species Act section 7 consultation on the U.S. troll albacore fishery as it would operate as a component of the fisheries to be managed under the HMS FMP. The resulting Biological Opinion indicated that the fishery is not likely to jeopardize the continued existence of any listed species under NMFS jurisdiction. NMFS also conducted a formal section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) on the U.S. troll albacore fishery as it would operate as a component of the fisheries to be managed under the HMS FMP. The resulting Biological Opinion concluded that the fishery is not likely to jeopardize the continued existence of any listed species under USFWS jurisdiction. The fishery as it would operate under this proposed rule is not expected to differ from the fishery under the HMS FMP. Thus, there are no different impacts expected on ESA-listed species, and no further consultations are necessary.

#### List of Subjects

##### 50 CFR Part 300

Fisheries, High seas fishing, International agreements, Reporting and recordkeeping requirements, Permits.

##### 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing

vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: April 27, 2004.

**Rebecca Lent,**

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

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

#### PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. A new subpart L is added to read as follows:

##### Subpart L—Pacific Albacore Tuna Fisheries

2. The authority citation for subpart L reads as follows:

**Authority:** Pub. L. 108-219.

##### § 300.170 Purpose and scope.

The regulations in this subpart govern fishing by U.S. vessels in waters under the fisheries jurisdiction of Canada pursuant to the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002. Regulations governing fishing by Canadian vessels in waters under the fisheries jurisdiction of the United States pursuant to this Treaty as amended in 2002 are found at § 600.530 of chapter VI of this title.

##### § 300.171 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act and § 600.10 of Chapter VI of this title, the terms used in this subpart have the following meanings:

*Fishing under the Treaty as amended in 2002* means to engage in fishing for albacore tuna in waters under the fisheries jurisdiction of Canada seaward of 12 nautical miles from the baseline from which the territorial sea is measured.

*Regional Administrator* means the Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, or a designee.

*Reporting Office* means the office designated by the Regional Administrator to take hail-in and hail-out reports from U.S. and Canadian vessel operators.

*Treaty* means the 1981 Treaty Between the Government of the United States of America and the Government

of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002.

##### § 300.172 Vessel list.

The "vessel list" is the list of U.S. vessels that are authorized to fish under the Treaty as amended in 2002. Only a vessel on the list for at least 7 days may engage in fishing in Canadian waters under the Treaty as amended in 2002. At least 7 (seven) days prior to the first day on which any fishing in Canadian waters may begin, the owner of any U.S. vessel that wishes to be eligible to fish for albacore tuna under the Treaty as amended in 2002 must provide the Regional Administrator or his designee with the vessel name, the owner's name and address, phone number where the owner can be reached, the U.S. Coast Guard documentation number (or State registration number if not documented), and vessel operator (if different from the owner) and his or her address and phone number. NMFS will then place the vessel on the vessel list.

##### § 300.173 Vessel identification.

A U.S. vessel fishing under the Treaty as amended in 2002 must be marked with its name and vessel identification prominently displayed where they will be clearly visible both from the air and from a surface vessel. Vessel identification means the U.S. Coast Guard Documentation number (or if not documented, the State registration number) followed by the letter U in the same height and size as the numerals. Numerals and the letter U must meet the size requirements of § 660.704 of chapter VI of this title.

##### § 300.174 Logbook reports.

The owner of any U.S. vessel that fishes for albacore tuna in Canadian waters under the Treaty as amended in 2002 must maintain and submit to the Regional Administrator a logbook of catch and effort of such fishing. The logbook form will be provided to the vessel owner as soon as practicable after the request to be placed on the list of vessels. The logbook must be submitted to the Regional Administrator within 15 days of the end of a trip, regardless of whether the trip ends by reentry to U.S. waters or entry to Canada's territorial sea, other Canadian waters in which fishing is not permitted, or a Canadian port. If the departure is due to exit to the high seas, the vessel operator must submit the logbook within 7 days of its next landing.

##### § 300.175 Hail-in and hail-out reports.

(a) The operator of any U.S. vessel that wishes to engage in fishing in

waters under the fisheries jurisdiction of Canada must file a hail-in report to the Reporting Office prior to engaging in fishing in such waters.

(b) The operator of a U.S. vessel that has been fishing under the Treaty as amended in 2002 must file a hail-out report to the Reporting Office within 24 hours of departing waters under the fisheries jurisdiction of Canada.

#### § 300.176 Prohibitions.

It is prohibited for the owner or operator of a U.S. fishing vessel to:

(a) Engage in fishing in waters under the fisheries jurisdiction of Canada if:

(1) The vessel has not been on the list of fisheries pursuant to § 300.172 for at least 7 days;

(2) The vessel is not clearly marked as required under § 300.173;

(3) The vessel operator has not filed a hail-in report with the Reporting Office as required under § 300.175(a); or

(4) The Regional Administrator has announced that the U.S. limit on fishing under the Treaty as amended in 2002 has been reached.

(b) Fail to maintain and submit logbook records of catch and effort statistics as required under § 300.174;

(c) Fail to report an exit from waters under the fisheries jurisdiction of Canada as required by § 300.175(b).

For the reasons set out in the preamble, 50 CFR part 600 subpart F is proposed to be amended as follows:

#### Subpart F—Foreign Fishing

3. The authority citation for subpart F continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.* as amended by Pub. L. 108–219.

4. A new § 600.530 is added to read as follows:

#### § 600.530 Pacific albacore fishery.

(a) *Purpose and scope.* This section regulates fishing by Canadian vessels under the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002. Regulations governing fishing by U.S. vessels in waters under the fisheries jurisdiction of the Canada pursuant to this Treaty are found at §§ 300.170–176 of chapter II of this title.

##### (b) Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act and § 600.10, the terms used in this subpart have the following meanings:

*Fishing under the Treaty as amended in 2002* means to engage in fishing for albacore tuna in waters under the fisheries jurisdiction of the United States seaward of 12 nautical miles from the baseline from which the territorial sea is measured.

*Regional Administrator* means the Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

*Reporting Office* means the office designated by the Regional Administrator to take hail-in and hail-out reports from U.S. and Canadian vessel operators.

*Treaty* means the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002.

(c) *Vessel list.* A Canadian vessel is not eligible to fish for albacore in U.S. waters under the Treaty as amended in 2002 unless the vessel is on the list provided to NMFS by the Government of Canada of vessels authorized by Canada to fish under the Treaty as amended in 2002.

(d) *Vessel identification.* A Canadian vessel fishing under the Treaty as amended in 2002 must clearly display its Canadian vessel registration number followed by the letter C in the same height and size as the numerals, consistent with Canadian vessel marking requirements.

(e) *Hail-in reports.* The operator of a Canadian vessel eligible to fish for albacore in U.S. waters under the Treaty as amended in 2002 must file a hail-in report with the Reporting Office prior to beginning any such fishing.

(f) *Hail-out Reports.* The operator of a Canadian vessel that has been fishing in U.S. waters under the Treaty as amended in 2002 must file a hail-out report with the Reporting Office prior to or upon exit from U.S. waters.

(g) *Prohibitions.* It is prohibited for the operator of a Canadian vessel to engage in fishing in U.S. waters if the vessel:

(1) Is not on the vessel list in paragraph (c) of this section;

(2) Has not filed a hail-in report to advise of an intent to fish under the Treaty as amended in 2002 prior to engaging in such fishing; or

(3) Is not clearly marked in accordance with paragraph (d) of this section.

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