

not, such as passengers. This policy does not apply to the following:

Identities of air carriers, repair stations, or other organizational entities whether or not the air carrier, repair station or other organizational entity is owned or operated by an individual; records generated or maintained by entities other than the FAA such as electronic records of accidents and/or incidents maintained by the National Transportation Safety Board; this policy does not apply to written records of accidents or incidents because it is the FAA's current policy to destroy those records pursuant to the retention guidelines contained in FAA Order 1350.15C.

This policy statement is published because the subject is a matter of general interest in the aviation community.

#### FAA Recordkeeping

The FAA maintains records of accidents and incidents in the Accident and Incident Data System (AIDS), and with paper documents. All records contain identifying information such as name, date of birth, and certificate number. The records also contain information about each accident or incident such as the date and place of the event as well as a description of what happened.

AIDS is an automated data base system that contains summaries of all FAA accident and incident investigations. Copies of paper documents associated with an accident or incident are not included in AIDS records. AIDS is the primary source of summary information for the FAA and the public concerning any accident or incident investigated by the FAA.

#### Expunction Policy

Electronic accident and incident records identifying an individual will now be maintained for five years from the date of the accident or incident. In that regard, it is believed that after five years, any information about an individual's identity will be of little, if any, value. Under this expunction policy, any information which identifies the individual will be removed from the AIDS record, including the individual's name and FAA certificate number. The case report number will not be removed, nor will the rest of the information, such as the pilot's experience, the description of the event, the N number and type of aircraft involved. This information will be maintained so that the FAA will be able to research the accident history of an aircraft or conduct statistical research of data.

In all cases, if at the time an AIDS record is due to be expunged, a

subsequent AIDS record has been opened, the first record will not be expunged unless and until the subsequent record is eligible for expungement.

#### Implementation of the AIDS Expunction Policy

The FAA currently has several decades of records which will be expunged under this policy. It is expected that the initial expunction of eligible AIDS records will be completed in stages.

Changes will be made to the AIDS program so that AIDS data eligible to be expunged is identified and automatically expunged from the AIDS computer base. The FAA expects that the necessary hardware and software changes to the AIDS data base system will be completed by [November 1, 2005].

Once this expunction system is fully functioning, the FAA intends to expunge identifying information from eligible AIDS records on a monthly basis. An individual may expect his or her AIDS records to be expunged during the month following the eligibility for expunction under this policy. The FAA maintains a large number of records in AIDS. Therefore, it is impossible for the Agency to assure the expunction of any particular record in strict accordance with this policy. If an individual becomes aware of any AIDS data eligible for expunction that has not been expunged, he or she may request amendment of the record under the Privacy Act, 5 U.S.C. 552a(d). Any request to amend an individual's AIDS record must be made in writing to the systems manager in accordance with the procedures prescribed in 49 CFR part 10.

Issued in Washington, DC on November 17, 2005.

**Marion Blakey,**  
*Administrator.*

[FR Doc. 05-23101 Filed 11-21-05; 8:45am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 050719189-5286-03; I.D. 071405C]

RIN 0648-AT33

#### International Fisheries; Pacific Tuna Fisheries; Restrictions for 2005 and 2006 Purse Seine and Longline Fisheries in the Eastern Tropical Pacific Ocean

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

**ACTION:** Final rule.

**SUMMARY:** NMFS publishes this final rule to implement the 2005 and 2006 management measures to prevent overfishing of the eastern tropical Pacific Ocean (ETP) tuna stocks, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS) under the Tuna Conventions Act. The purse seine fishery for tuna in the ETP will be closed for a 6-week period beginning November 20, 2005, through December 31, 2005, and beginning November 20, 2006, through December 31, 2006. In this final rule, NMFS also announces that the longline fishery will close when a 150-mt limit has been reached. These actions are taken to limit fishing mortality on tuna stocks caused by purse seine fishing and longline fishing in the Convention Area and contribute to the long-term conservation of tuna stocks at levels that support healthy fisheries.

**DATES:** The 2005 tuna purse seine fishery closure is effective November 20, 2005, through December 31, 2005. The 2006 tuna purse seine fishery closure is effective November 20, 2006, through December 31, 2006. For 2006, the bigeye longline fishery will close when the bigeye tuna catch reaches 150 mt. NMFS will publish a notification in the **Federal Register** announcing the effective date of that closure.

**ADDRESSES:** Copies of the regulatory impact review/final regulatory flexibility analysis (FRFA) may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90902-4213.

**FOR FURTHER INFORMATION CONTACT:** J. Allison Routt, Sustainable Fisheries

Division, Southwest Region, NMFS, (562) 980-4030.

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register's** website at <http://www.gpoaccess.gov/>.

**SUPPLEMENTARY INFORMATION:** The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949 (Convention). 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. For the purposes of these closures, the Convention Area is defined to include the waters of the ETP bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of tuna stocks and promote viable fisheries.

Under the Tuna Conventions Act, 16 U.S.C. 951-962, NMFS must publish regulations to carry out IATTC recommendations and resolutions that have been approved by DOS. A proposed rule to carry out the IATTC-recommended and DOS-approved closures for the ETP purse seine and longline tuna fisheries for 2005 and 2006 was published in the **Federal Register** on August 15, 2005 (70 FR 47774). The Southwest Regional Administrator also is required by regulations at 50 CFR 300.25(b)(3) to issue a direct notice to the owners or agents of U.S. vessels that operate in the ETP of actions recommended by the IATTC and approved by the DOS. In May 2005 and September 2005, the Regional Administrator, Southwest Region, sent notices to owners and agents of U.S. fishing vessels describing the actions recommended by the IATTC June 2004 Resolution and approved by the DOS.

At the June 2004 IATTC meeting, a new resolution was adopted by the Commission. The June 2004 resolution offers Parties a choice for closing the purse seine fishery in the Convention Area: either a 6-week closure beginning August 1, or a 6-week closure beginning November 20. The closure will target fishing activity that results in high catches of juvenile tuna.

The June 2004 resolution also calls upon each Party and cooperating non-

Party to take measures necessary to ensure that each nation's longline catch of bigeye tuna in the Convention Area during 2005 and 2006 will not exceed the total longline catch by the nation in the Convention Area in 2001. The U.S. catch level for 2001 is estimated to have been 150 mt in the Convention Area. This final rule allows the United States to comply with the June 2004 resolution.

The IATTC action at the June 2004 meeting came after considering a variety of measures, including the use of quotas and partial fishery closures as implemented in 1999 through 2002 and the full month purse seine closure used in 2003. The resolution of June 2004 incorporated flexibility for nations to administer the purse seine closure in accordance with national legislation and national sovereignty. The selected measures should provide protection against overfishing of the stocks in a manner that is fair, equitable, and readily enforceable. The DOS has approved the IATTC recommendations.

The conservation and management measures are based on 2004 assessments of the condition of the tuna stocks in the ETP and historic catch and effort data for different portions of the ETP, as well as records relating to implementation of quotas and closures in prior years. The measures are believed by the IATTC to be sufficient to reduce the risk of overfishing of tuna stocks. The IATTC met in June 2005 and reviewed new tuna stock assessments and fishery information and considered the new assessment and fishery stock assessment information. In evaluating possible management measures for 2004 and future years, the IATTC selected a multi-annual time/area approach to conserve and manage the tuna stocks in the Convention Area.

This final rule implements the 6-week closure to purse seining in the Convention Area beginning November 20, 2005, and beginning November 20, 2006. These closures were chosen in response to comment supportive of this closure period rather than the period beginning on August 1. This final rule also provides that the U.S. longline fishery for bigeye tuna in the Convention Area will close for the remainder of the calendar year 2006 if the catch reaches 150 mt, the catch level of 2001. If necessary, this closure will prohibit U.S. longline bigeye tuna vessels from retaining bigeye tuna in the Convention Area. Longline vessels will not be subjected to this closure if the permit holder declares to NMFS under the Fishery Management Plan (FMP) for the Pelagic Fisheries of the Western Pacific Region that they intend to

shallow-set to target swordfish (50 CFR 660.23). NMFS will provide notice of closure of the longline fishery. These actions ensure that U.S. vessels fish in accordance with the conservation and management measures that the IATTC recommended in June 2004.

On September 2, 2005, NMFS determined that the 150 mt-catch level had been reached for the 2005 season and closed the U.S. longline fishery for bigeye tuna in the IATTC Convention Area under an emergency rule (70 FR 52324-52325). This closure prohibited U.S. longline bigeye tuna vessels from retaining bigeye tuna in the Convention Area. Longline vessels were not subject to the emergency rule if the permit holder declared to NMFS under the FMP for the Pelagic Fisheries of the Western Pacific Region that they intend to shallow-set to target swordfish (50 CFR 660.23).

### Comments and Responses

During the comment period for the proposed rule, NMFS received comments from tuna industry organizations, environmental organizations, members of the public, and the Western Pacific Fishery Management Council (Western Pacific Council). Key issues and concerns are summarized below and responded to as follows:

#### *Timing of the Closures*

*Comment 1:* Comments were received that vessel owners support the closure period set forth in the proposed rule. The vessel owners have two specific reasons for preferring the year-end closure. First, the weather conditions on the high seas and in the Convention Area at year-end are normally more problematic than during the August-September period. Fishing conditions are affected by weather, and the vessel owners would prefer that the closure not take place during the period when the weather is least likely to adversely affect fishing. Second, there is currently a short supply of fish, and fish prices have finally begun to return to levels that support economically profitable fishing. A mid-year closure could prevent U.S. vessels from capitalizing on this opportunity. Finally, a later closure allows better opportunity for planning operations and scheduling repairs and maintenance during the closure. For these reasons U.S. vessel owners would prefer to delay the closure until later in the year.

*Response:* NMFS has decided to implement the late closure supported by industry for the reasons presented.

*Comment 2:* One commenter expressed a preference for the August 1

through September 11, 2005, closure. This commenter stated that his/her businesses would be economically disadvantaged by the later closure.

*Response:* NMFS considered this closure. However, the overwhelming majority of commenters favored of the 6-week closure beginning November 20. For the reasons stated in Comment 1, NMFS has chosen to implement the later closure. The impacts discussed in the RIR are the same under both closure options.

#### 2001 U.S. Longline Catch

*Comment 3:* It is probably wrong to assume that the catch of bigeye in the ETP by U.S. flagged longline vessels is no more than 150 mt.

*Response:* NMFS has concluded that the catch in 2001 was 150 mt. In 2004, NMFS scientists evaluated the U.S. longline catch of bigeye tuna for 2001. NMFS scientists estimated the longline bigeye tuna catch east of 150° W. meridian by multiplying the numbers of fish reported as retained in log books from the Hawaii and California based longline fleets times the mean weight of bigeye tuna from the Hawaii-based longline fishery. Three data sets were used to estimate bigeye catches east of 150° W. meridian. These were the Hawaii-based longline logbook data (1999–2003), the Honolulu market sample data (1999), and the State of Hawaii Fish Dealer Data (2000–2003). In addition, U.S. flagged longline vessels operate out of California and catch bigeye tuna east of 150° W. These vessels are required to fill in either the NMFS Western Pacific Daily Longline Fishing Log or High Seas Pelagic Longline Logs and submit them to the NMFS Southwest Regional Office in Long Beach, California. These logbook data provide fishing location and catch by species. The estimated U.S. longline bigeye tuna catch was 150 mt in 2001. The relatively low yields in 2001 and 2002 were probably caused by constrained fishing patterns that reflected regulatory initiatives to the U.S. longline fleet targeting swordfish in the ETP.

*Comment 4:* Why were the 2001 levels used and not earlier years that may be more indicative of U.S. historical catches?

*Response:* The IATTC Secretariat recommended and the IATTC chose the year 2001 for the bigeye longline benchmark because this was the most recent year that nations party to or cooperating with the IATTC were able to supply a complete annual data set and because this represented the last year before a substantial increase in eastern Pacific longline fishing. Parties

to the IATTC wanted to limit longline effort to this lower level.

#### Bigeye Longline Quota

*Comment 5:* Several comments received stated that the longline bigeye tuna limit would be unfair to U.S. interests.

*Response:* At the June 2005 IATTC annual meeting, the U.S. delegation lobbied for relief for our U.S. interests for the longline bigeye tuna fishery. The U.S. delegation was not successful in persuading all other IATTC member nations to amend the June 2004 Resolution. NMFS and the DOS continue to hear from constituents that the current longline bigeye tuna limit is unfair to U.S. interests. NMFS appreciates these concerns and has taken these concerns to the U.S. delegation. The U.S. delegation will continue to work through the proper channels towards balanced treatment for the U.S. longline bigeye tuna fleet within the bounds of the IATTC consensus-based process.

*Comment 6:* NMFS does not have a timely system for collection and processing of longline catch data so that the industry can be given an advance notification of a prospective closing date for the longline fishery in the ETP.

*Response:* The NMFS Pacific Islands Regional Office will collaborate with the U.S. longline bigeye tuna industry in developing a more efficient monitoring program for 2006.

*Comment 7:* NMFS is aware that the longline bigeye tuna quota of 150 mt was exceeded in both 2004 and 2005. This clearly indicates that there is additional demand beyond 150 mt.

*Response:* NMFS is aware that the longline bigeye tuna quota of 150 mt was exceeded in both years. As a solution to exceeding the quota, NMFS Pacific Islands Regional Office will collaborate with the U.S. longline bigeye tuna industry in developing a more efficient monitoring program for 2006. While exceeding the quota could be indicative of additional demand beyond 150 mt, the IATTC June 2004 Resolution did not give NMFS discretion to increase the U.S. quota beyond 150 mt. At the June 2005 annual meeting of the IATTC, the U.S. delegation was not successful in persuading all other IATTC member nations to amend the June 2004 Resolution.

*Comment 8:* A commenter asked who conducted the analysis on which the initial estimate of 100 mt of bigeye tuna was based and questioned if it was based on the best available data. Further, the commenter wanted to know what protocols govern the monitoring of U.S. longline bigeye catches in the

IATTC area, and which NMFS office is taking the lead on this issue. The commenter requested NMFS communicate better on issues within the Convention Area that may affect fisheries by vessels based different regions.

*Response:* The initial estimate of 2001 U.S. longline catch of bigeye tuna in the Convention Area was derived by the NMFS Southwest Region using landings and log book data from both Hawaii and California. While the preliminary estimate of the U.S. catch in 2001 was 100 mt, after receiving public comments in 2004, NMFS reviewed the initial estimate and made adjustments based on a sound statistical basis. NMFS will implement a protocol for monitoring U.S. longline bigeye catches in the IATTC Convention Area so that the fishery can be closed if the U.S. catch limit for 2006 is reached before the end of the year. This protocol for monitoring includes direct notice to fishing vessel owners and operators. The Southwest Region has the lead for collaborating with the DOS and constituents in implementing conservation recommendations of the IATTC. The Southwest Region recognizes that longline vessels based in Hawaii may fish in the Convention Area and thus could be affected by measures recommended by the IATTC and approved by DOS. The Southwest Region will increase its efforts to communicate with all stakeholders including the relevant fishery management councils, the Pacific Fishery Management Council (Pacific Council) and the Western Pacific Council, prior to IATTC meetings to ensure that the interests of all U.S. fisheries are considered in development of U.S. positions at IATTC. (The Pacific Council and the Western Pacific Council are two of eight regional fishery management councils established by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) for the purpose of developing FMPs to govern fisheries off the coasts of the United States.) As soon after IATTC meetings as practicable, the Southwest Region will inform the Pacific and Western Pacific Councils of IATTC actions that affect fisheries in the Councils' areas of concern. NMFS fully recognizes that the Pacific and Western Pacific Councils have roles as principals in highly migratory species fisheries management under the Magnuson-Stevens Act and is working to ensure that measures under international conventions are compatible and coordinated to the extent necessary.

*Comment 9:* One commenter stated that the longline requirements of the June 2004 IATTC Resolution pertain only to large-scale tuna longline vessels (LSTLV's) (greater than 24 meters in length).

*Response:* The June 2004 IATTC Resolution applies to "longline vessels" of all sizes. As an additional requirement, the June 2004 IATTC Resolution requires that nations with LSTLV's provide to the IATTC Director monthly catch reports of tuna harvested with longline gear.

#### General Comments

*Comment 10:* One organization stated that they had no opposition to the proposed closures and other elements of the proposed rule for restrictions on the tuna purse seine fishery or the longline fishery for bigeye tuna in the ETP for 2005 and 2006. This organization expressed their continuing concerns regarding conservation of tunas in the ETP and asked that NMFS continue to work towards multilateral solutions to the multilateral fisheries of this proposed rule. This organization stated that the June 2004 IATTC resolution does not address the full problem and overfishing will continue, with subsequent depletion of the stocks.

*Response:* NMFS thanks the organization for their support. NMFS agrees that the issues of conservation and management of the tuna stocks in the ETP need to be addressed multilaterally. Under the IATTC, NMFS and DOS will continue to work with the nations party to the IATTC to conserve and manage tuna stocks in the ETP.

*Comment 11:* One commenter asked that NMFS shut down tuna fisheries in the Pacific Ocean for 6 months. The commenter stated that the current proposal steals our children's heritage by commercial fishermen and greedy profiteers.

*Response:* The tuna fishery closures in the Pacific Ocean were negotiated on a multilateral basis and strike a balance between many competing interests. The measures are believed by the IATTC to be sufficient to reduce the risk of overfishing of tuna stocks.

*Comment 12:* NMFS received a comment regarding the number of current participants in the West Coast Longline Fishery. The commenter stated that our current number of participants was incorrect.

*Response:* NMFS agrees and has corrected this participant number in the final analysis. NMFS recognizes that this number could increase in the future and is not a static number.

#### Classification

This action is consistent with the Tuna Conventions Act, 16 U.S.C. 51–962. This action is consistent with the regulations governing the Pacific Tuna Fisheries at 50 CFR 300.25.

A 30-day delay in effectiveness is generally required under 5 U.S.C. 553(d)(3) for rules with substantive impact on the public. For the following reasons, the Assistant Administrator for Fisheries finds good cause to waive the 30-day delay in effectiveness of this rule. First, delaying closure of the U.S. tuna purse seine fishery in the ETP beyond November 20 would contravene the U.S. obligations to adhere to a binding resolution of the IATTC, and its obligations to manage tuna stocks in a sustainable manner under the Tuna Conventions Act. Second, delaying the effectiveness of this rule may result in the U.S. purse seine vessels continuing to fish in the ETP after November 20, thereby placing further pressure on tuna stocks. That said, beginning in 2004, NMFS gave actual notice of this closure several times to each of the vessel owners and operators affected by this closure; NMFS will also provide each owner with a copy of this **Federal Register** document.

On December 8, 1999, NMFS prepared a biological opinion (BO) assessing the impacts of the fisheries as they would operate under the interim final regulations implementing the International Dolphin Conservation Program Act (IDCPA) 65 FR 47, January 3, 2000). In this BO, 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. 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 have no different effect than what was concluded in the BO.

On October 4, 2005, NMFS concluded that the Hawaii-based pelagic, deep-set, tuna longline fishery managed under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region is 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 fishery such that there would be impacts beyond

those considered in that BO. Therefore, NMFS has determined that additional ESA consultation is not required for this action.

Under its Consolidated Resolution on Bycatch, the IATTC has adopted conservation measures to reduce sea turtle injury and mortality from interactions in the purse seine fishery. As a result, impacts of the fisheries on sea turtle injury and mortality should be lower than in the past. NMFS has implemented the IATTC conservation measures to reduce sea turtle injury and mortality at 50 CFR 300.25(e).

A FRFA was prepared that describes the economic impact of this final rule. A copy of this analysis is available from NMFS (see **ADDRESSES**). Comments were received on the initial regulatory flexibility analysis for the proposed rule. The comments have been addressed and are reflected in the FRFA for this final rule and in the summary below. A summary of the analysis follows.

A statement of the need for, and objectives of, the rule is provided in the **SUPPLEMENTARY INFORMATION** section above.

Small vessels, purse seine or longline, are categorized as small business entities (revenues below \$3.5 million per year).

This action would prohibit the use of purse seine gear to harvest tuna in the ETP for a 6-week period beginning November 20, through December 31, for both the 2005 and 2006 calendar years and limit the annual 2006 U.S. catch of bigeye tuna caught by longline in the ETP to 150 metric tons.

The purse seine closure applies to the U.S. tuna purse seine fleet, which consists of 10–20 small vessels (carrying capacity below 400 short tons (363 metric tons)) and 4–6 large vessels (carrying capacity 400 short tons (363 metric tons) or greater).

The small purse seine vessels fish out of California in the U.S. exclusive economic zone most of the year for small pelagic fish (Pacific sardine, Pacific mackerel) and for market squid in summer. Some small vessels harvest tuna seasonally when they are available. NMFS believes that the time/area closure will have no effect on small purse seine vessels because they do not have the endurance and markets to fish that far from their coastal home ports.

The large purse seine vessels usually fish outside U.S. waters and deliver their catch to foreign ports or transship to processors outside the mainland United States. The large vessels are categorized as large business entities (revenues in excess of \$3.5 million per year). A large purse seine vessel

typically generates 4,000 to 5,000 metric tons of tuna valued at between \$4 and \$5 million per year. The closure should not significantly affect their operations as they are capable of fishing in other areas that would remain open.

The 2004 IATTC Tuna Convention Resolution offers each country a choice for closing the fishery for a 6-week period beginning either August 1 or November 20, of each of the years in 2004, 2005, and 2006. NMFS considered the alternative of the 6-week closure beginning on August 1, but based on public comments on the proposed rule in 2005, NMFS chose the 6-week closures to begin on November 20, 2005 and November 20, 2006. In particular, the U.S. purse seine fleet prefers a closure later in the fishing year because the winter weather is not conducive to fishing. Also, throughout the history of this fishery shipyards are prepared to accept vessels for scheduled repairs during the winter months. The fishery closure later in the year allows the industry to plan for and mitigate economic impacts while still providing the conservation benefits to the tuna resources in the ETP. NMFS also considered the "no action" alternative of not implementing a purse seine closure, which would have imposed no economic costs on small entities. However, failure to implement measures that have been agreed on pursuant to this Convention would violate the United States' obligations under the Convention and the Tuna Conventions Act.

The U.S. longline fishery for bigeye tuna in the ETP is relatively small. Vessels in the fishery are characterized as small business entities, the majority of which are based in Hawaii. The Hawaii fleet (approximately 120 active vessels) has pursued a mix of swordfish targeting, tuna targeting, and mixed trip fishing. While the fleet usually fishes west of the ETP, there have been trips into the ETP or in which a portion of the effort was deployed in the ETP. Based on logbook data analyses, NMFS has determined that the catch of bigeye in the ETP in 2001 was 150 mt. In 2003, a total of 49 Hawaii and California based longline vessels made 92 whole or partial trips east of 150° W. long, landing 232 mts of bigeye tuna. In 2004, 52 longline vessels made 87 whole or partial trips landing 158 mts of bigeye tuna. NMFS recognizes that this closure places a hardship on this fishery. Overall, a closure should not significantly affect their operations as they are capable of fishing in other areas that would remain open, outside the boundaries of the IATTC Convention Area. NMFS recognizes that this closure

places a further hardship on the West Coast fishery because of the difficulties involved in traveling outside the boundaries of the IATTC Convention Area for bigeye tuna.

NMFS considered the "no action" alternative of not implementing the longline closure provided in the 2004 IATTC Tuna Convention Resolution. This alternative would have imposed no economic costs on small entities. However, failure to implement measures that have been agreed on pursuant to this Convention would violate the United States' obligations under the Convention, and would violate the Tuna Conventions Act. The IATTC did not provide for alternatives in setting the 150 mt bigeye quota, which was approved by the DOS. As a result, NMFS has no discretion to refrain from promulgating the quota. Further, the Tuna Conventions Act does not provide authority for the United States to take independent action to conserve and manage fisheries subject to management under the IATTC Convention.

For both the purse seine and the longline tuna fisheries, the closures will have a temporary impact as vessels can return to the fishery on January 1.

This rule does not impose any new reporting or recordkeeping requirements.

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

**Authority:** 16 U.S.C. 951–962. and 971 *et seq.*

Dated: November 15, 2005.

**James W. Balsiger,**

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

[FR Doc. 05–22991 Filed 11–17–05; 1:24 pm]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

**[Docket No. 041126332–5039–02; I.D. 111705A]**

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processor Vessels Using Pot Gear in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 total allowable catch (TAC) of Pacific cod specified for catcher/processor vessels using pot gear in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), November 17, 2005, until 2400 hrs, A.l.t., December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 Pacific cod TAC allocated to catcher/processor vessels using pot gear in the BSAI is 3,352 metric tons as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) and the reallocation on October 5, 2005 (70 FR 58983, October 11, 2005). See § 679.20(c)(3)(iii) and (c)(5), and (a)(7)(i)(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2005 Pacific cod TAC allocated to catcher/processor vessels using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using pot gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### **Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries