

REGULATORY IMPACT REVIEW

**FOR A RULE TO IMPLEMENT PROCEDURES TO
REQUEST LICENSES AND A SYSTEM TO
ALLOCATE LICENSES UNDER THE
SOUTH PACIFIC TUNA TREATY**

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March 2010

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1. Introduction

This document is a regulatory impact review (RIR) prepared under Executive Order 12866, “Regulatory Planning and Review.”

The regulatory philosophy of E.O.12866 stresses that in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives and choose those approaches that maximize the net benefits to society. To comply with E.O.12866, the National Marine Fisheries Service (NMFS) prepares an RIR for all regulatory actions that are of public interest. The RIR provides a review of the problems and policy objectives prompting the regulatory proposals, an evaluation of the major alternatives that could be used to meet the objectives, and a comprehensive review of the level and incidence of economic impacts associated with the regulatory action.

This RIR is for a proposed regulatory action on the part of NMFS under authority of the South Pacific Tuna Act of 1988 (SPTA) to modify the procedures to request licenses for U.S. purse seine vessels participating in the tuna fishery of the western and central Pacific Ocean (WCPO) and to establish a system for allocating licenses in the event more applications are received than there are licenses available. The action would also modify the vessel monitoring system (VMS) requirements under the SPTA. The SPTA (16 U.S.C. 973-973r) and its implementing regulations at 50 CFR part 300, subpart D, implement the terms and conditions of the Treaty on Fisheries between the Governments of Certain Pacific Islands States and the Government of the United States of America (South Pacific Tuna Treaty or SPTT; hereafter called the “Treaty”).

2. Management Objective

Section 973g of the SPTA provides for the Secretary of Commerce (Secretary) to establish a system of allocating licenses in the event more applications are received than there are licenses available and to establish procedures for a vessel operator to request a license from the Secretary. NMFS, on behalf of the Secretary, proposes to establish a system for allocating licenses for U.S. purse seine vessels operating in the Treaty’s Licensing Area and to modify the existing procedures to accommodate the allocation system that would be established by proposed rule. NMFS has determined that this action is necessary because the number of licenses issued is approaching the maximum number of licenses allowed. Under the Treaty there are 40 “general” licenses and five joint-venture licenses available. Licenses are issued on an annual basis, using a licensing period that extends from June 15 through June 14. Of the 40 general licenses available, 37 were in issuance as of March 2010 (unpublished NMFS data).

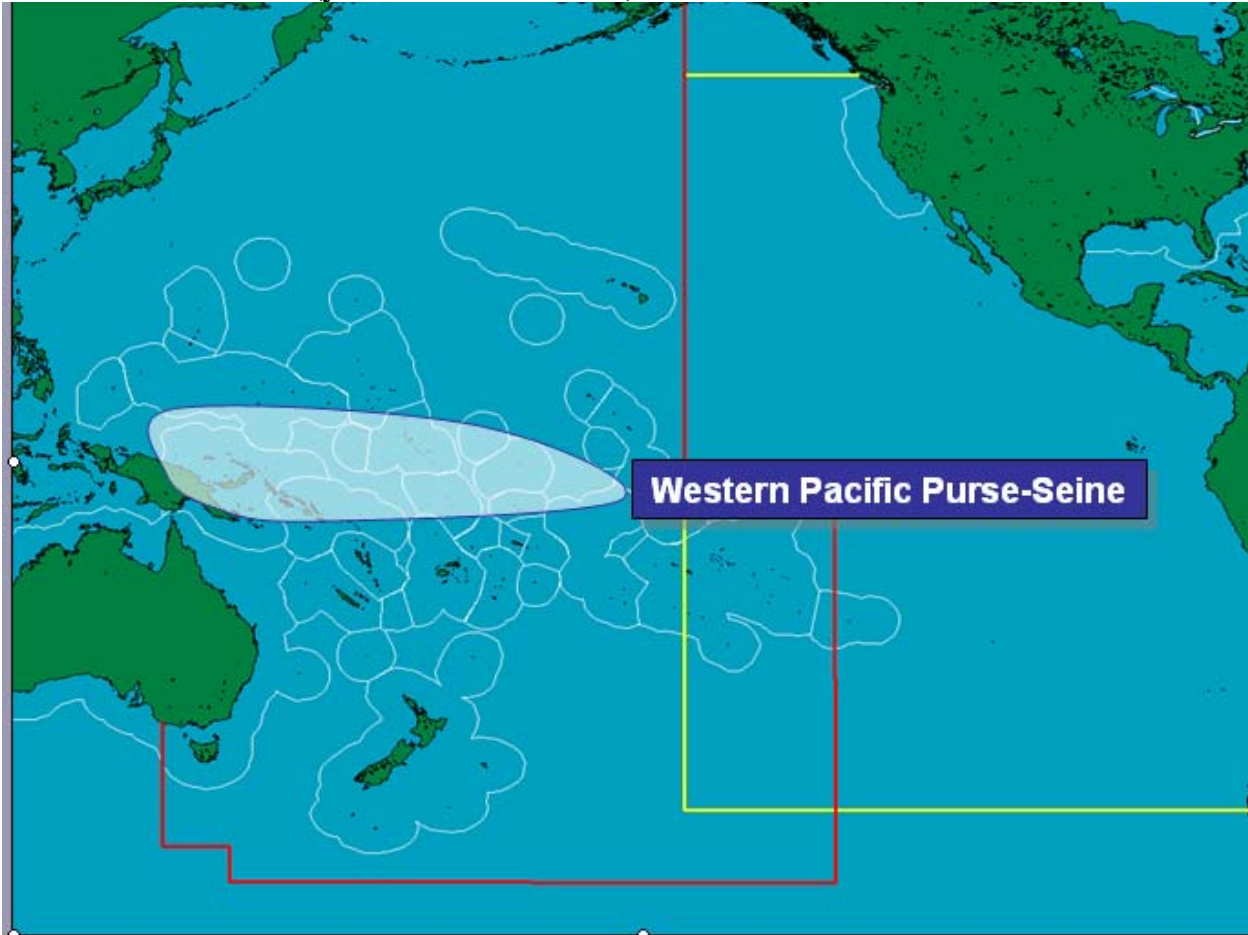
The proposed rule would also modify the regulations regarding VMS unit requirements for U.S. purse seine vessels licensed under the Treaty. Existing regulations (50 CFR 300.45) require that licensed vessels carry and operate VMS units that are type-approved by the Treaty Administrator, which is the individual or organization designated by the 16 Pacific Island Parties to the Treaty (PIPs) to act on their behalf. The Pacific Islands Forum Fisheries Agency (FFA) is currently the Treaty Administrator. This proposed action would modify the VMS requirements

such that the required VMS units would have to be type-approved by NMFS as well as by the Treaty Administrator. This element of the proposed action would ensure that the VMS units used in the U.S. purse seine fleet are compatible with both the FFA's and NMFS' VMSs.

3. Description of the Affected Fisheries

U.S. vessels in the WCPO purse seine fishery typically target skipjack and yellowfin tuna throughout the equatorial regions of the Treaty Area. They fish both on unassociated free-swimming schools of tuna ("school sets") and in association with drifting logs/flotsam or man-made fish aggregating devices (FADs). The catch is frozen on board and destined for canneries in the United States and abroad. The fishery occurs on the high seas and in the exclusive economic zones of PIPs, as well as in the U.S. exclusive economic zone, primarily between 10° North and 10° South latitude within the Treaty Area. Figure 1 shows the boundaries of the Treaty Area. A rough depiction of the fleet's typical general fishing grounds is shown in Figure 2.

Figure 2. A rough depiction of the typical main fishing grounds of the U.S. WCPO purse seine fishery. Also shown are the respective areas of application of the Western and Central Pacific Fisheries Convention Area (red boundaries) and the Antigua Convention (yellow/red boundaries).



3.1. Fishery management

U.S. purse seine vessels operating in the WCPO are subject to – among other fisheries regulations – regulations issued under the SPTA to implement the Treaty. The Treaty, which entered into force in 1988, regulates the access of U.S. purse seine vessels to the exclusive economic zones (EEZs) of the PIPs through a licensing system and other controls. The PIPs are the 16 member States of the Pacific Islands Forum, which for fisheries issues is served by the Forum Fisheries Agency (FFA). The PIPs are: Australia, Cook Islands, Federated States of Micronesia, Fiji, Republic of Kiribati, Republic of the Marshall Islands, Republic of Nauru, New Zealand, Niue, Republic of Palau, Papua New Guinea, Solomon Islands, Kingdom of Tonga, Tuvalu, Republic of Vanuatu, and Samoa. After the initial five-year agreement, the Treaty was extended for 10 years until June 14, 2003 (the second extension), and was extended again for a further 10-year period through June 14, 2013 (the third extension).

The FFA, which serves as the Administrator of the Treaty on behalf of the PIPs, issues licenses to U.S. purse seine vessels fishing in the Licensing Area defined in the Treaty. The area encompasses the most productive tuna fishing grounds in the WCPO, from Palau eastward to the Line Islands of Kiribati and the Cook Islands. The Treaty originally provided for 50 general licenses for U.S. purse seine vessels, and an additional five license for U.S. purse seine vessels engaged in joint-venture arrangements with one or more PIPs. Since 2003, the maximum number of licenses has been 45, five of which are reserved for joint ventures. Figure 3 shows the number of licensed vessels from 1998 through 2009. No joint-venture licenses have been issued to date. Licenses are issued on an annual basis, with the licensing period starting June 15 each year.

The Treaty terms and conditions are implemented domestically by regulations issued under authority of the SPTA (50 CFR part 300, subpart D). The licensing provisions of those regulations are at 50 CFR 300.32. Under those regulations, license applications are first submitted to NMFS, which ensures they are complete and forwards them to the FFA on a first-come, first-served basis.

As part of the advance notice of proposed rulemaking (ANPR) associated with the proposed rule considered in this RIR, NMFS established a control date of March 28, 2008, applicable to purse seine vessels that are subject to the Treaty and the SPTA. The ANPR notified vessel owners and operators that they would not be guaranteed future participation in the fishery after the control date of March 28, 2008, if NMFS decides to revise the criteria and procedures used to process license applications and /or to limit further the number of licenses available in the fishery.

Other fisheries regulations with provisions applicable to the U.S. WCPO purse seine fleet include those issued under authority of: the High Seas Fishing and Compliance Act of 1995 (HSFCA; see 50 CFR part 300, subpart B); the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA; see 50 CFR part 300, subpart O); and the Magnuson-Stevens Conservation and Management Act (MSA; see 50 CFR part 600). U.S. Coast Guard vessel documentation requirements are also relevant. Some of the main requirements in the U.S. WCPO purse seine fishery are:

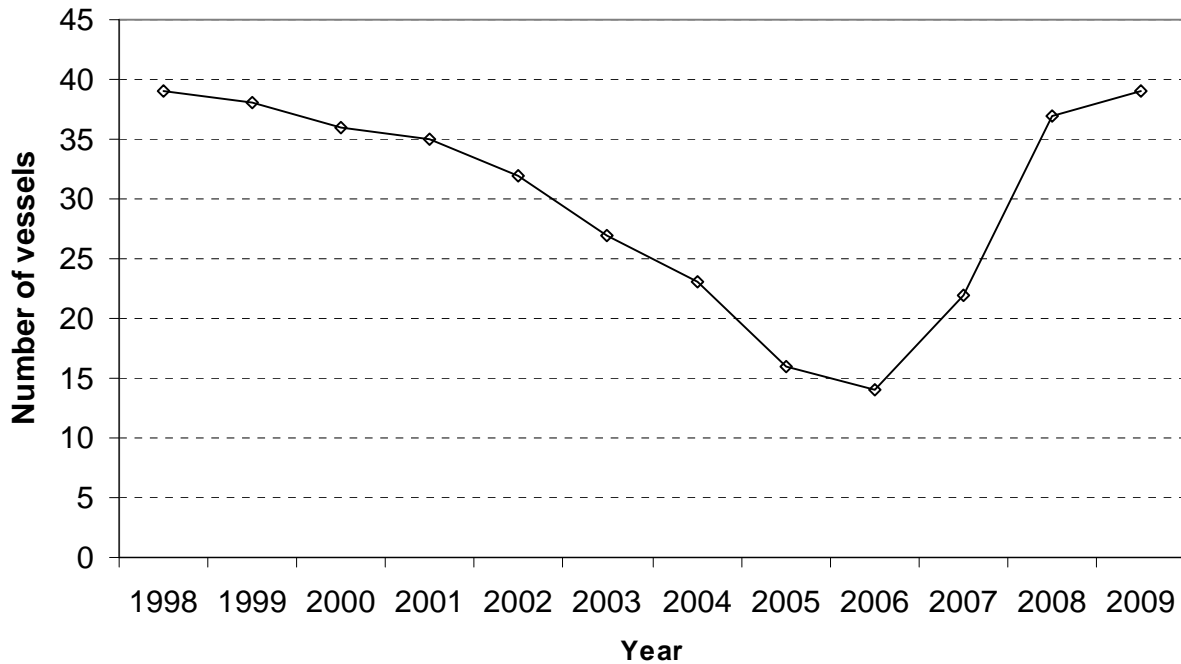
- U.S. vessels used for fishing on the high seas are required to have a permit issued under the HSFCA. Additionally, pursuant to the WCPFCIA, U.S. vessels used for commercial fishing for highly migratory species (HMS) on the high seas in the WCPFC Convention Area (see Figure 2) are required to have a WCPFC Area Endorsement on their HSFCA permit.
- U.S. purse seine vessels operating in the Treaty's Licensing Area must have a license issued by the Treaty Administrator (the FFA). The Licensing Area consists of the entire Treaty Area less areas under U.S. jurisdiction and closed areas. The Treaty and SPTA implementing regulations provide for the availability of 45 licenses, five of which are only available to fishing vessels engaged in joint venture arrangements with the Pacific Islands Parties.

- U.S. vessels licensed under the Treaty may not be used to fish in Closed Areas designated under the Treaty; there are several such Closed Areas in the waters of the PIPs.
- U.S. vessels operating under the Treaty cannot be used for directed fishing for southern bluefin tuna (*Thunnus maccoyii*) or for fishing for any kinds of fish other than tunas, except fish that may be caught incidentally.
- U.S. purse seine vessels are prohibited from transshipping fish at sea in the WCPF Convention Area.
- U.S. vessels operating under the Treaty are required to submit both written and electronic reports on their fishing activities in the Treaty Area to NMFS.
- U.S. vessels operating under the Treaty must carry FFA observers, at a target coverage rate of 20% (in terms of trips). During 2010 and 2011, U.S. purse seine vessels operating in the WCPF Convention Area must carry WCPF Commission observers on all trips.
- Vessels operating under the Treaty are required to carry and operate VMS units to provide position information to the Treaty Administrator and NMFS. Additionally, U.S. vessels operating on the high seas in the WCPF Convention Area are required to carry VMS units to provide position information to the WCPF Commission and NMFS.
- U.S. vessels operating under the Treaty and U.S. vessels used for fishing for HMS on the high seas in the WCPF Convention Area are required to be identified in accordance with the 1989 United Nations Food and Agriculture Organization standard specifications for the marking and identification of fishing vessels, which requires that the vessel's international radio call sign be marked on the hull and deck.
- During 2009-2011, U.S. purse seine fishing effort in the WCPF Convention Area, on the high seas and in areas under U.S. jurisdiction, is subject to specific annual, two-year, and three-year limits on fishing days.
- During 2009-2011, U.S. purse seine vessels may not be used to fish in the WCPF Convention Area in association with FADs during specified periods each year.
- U.S. vessels without fishery endorsements on their Certificates of Documentation may not be used to fish in the U.S. EEZ.

3.2. Fleet characteristics, fishing effort, and catch

Figure 3 shows the number of vessels licensed under the Treaty from 1998 through 2009. No joint-venture licenses have been issued to date. The number of general licenses issued reached a low of 11 at one point in 2006, but the number increased rapidly since then, reaching 39 in 2009. The number is currently 37.

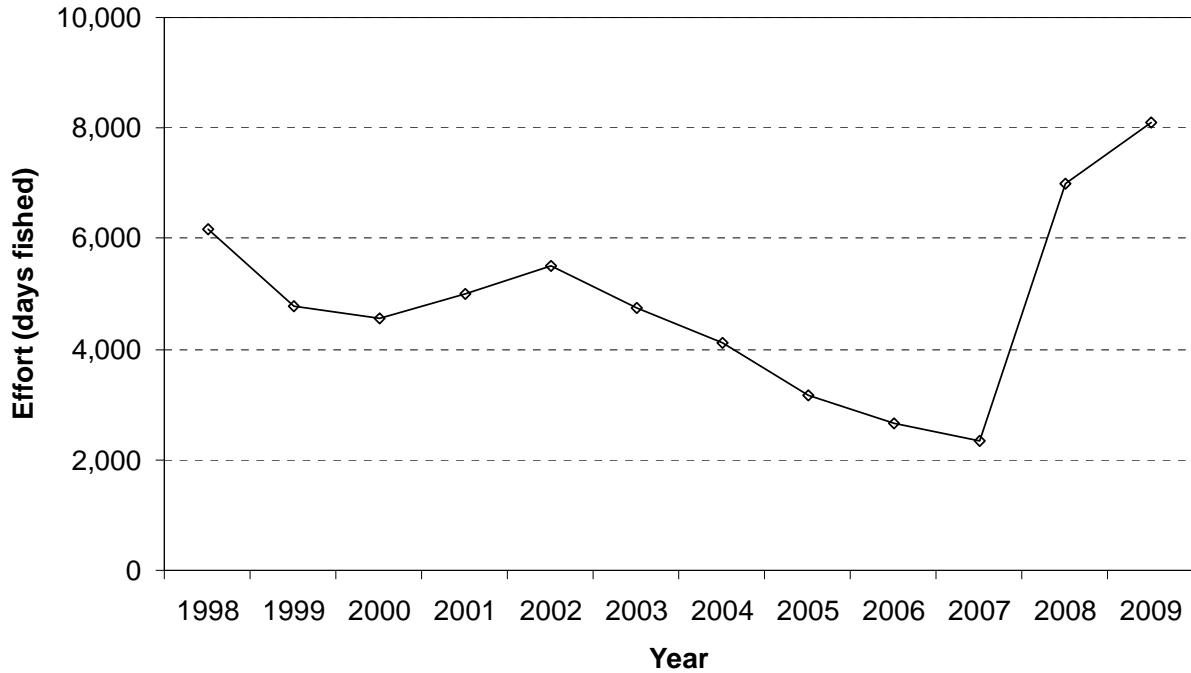
Figure 3. Number of U.S. purse seine vessels licensed under the South Pacific Tuna Treaty, 1998-2009 (source: USCG and NMFS, 2010).



The 37 vessels currently in the U.S. WCPO purse seine fleet range in length from 174 to 260 feet and their gross registered tonnages range from 863 to 2,437. Crew sizes range from 18 to 36. Their fish carrying capacities range from approximately 1,000 to 1,770 metric tons.

From 1997 through 2007 (the last year for which complete effort data are available), the fleet exerted about 8 percent of its effort in the U.S. EEZ, 23 percent on the high seas, and the remainder in the EEZs of PIPs (unpublished NMFS data). The percentages for any given year during that period ranged from 5 to 21 percent for the U.S. EEZ, 18 to 30 percent for the high seas, and 60 to 78 percent for the EEZs of PIPs. Figure 4 shows the fleet's approximate total fishing effort, in days-fished, from 1998 through 2009.

Figure 4. U.S. WCPO purse seine fishing effort, 1998-2009; 2009 estimate is preliminary (sources: NMFS unpublished data (for 1998-2007) and OFP SPC, 2010 (for 2008-2009)).



In recent years, the U.S. WCPO purse seine fishery has accounted for more than two-thirds of the total U.S. catch of HMS in the WCPO. In 2007, for example, the U.S. purse seine fishery accounted for 78 percent of the total U.S. commercial catch of HMS in the WCPO, while the longline, albacore troll, tropical troll, handline, and pole-and-line fisheries accounted for 19, 0.2, 1.8, 0.6, and 0.3 percent, respectively (NMFS 2008). The tuna catch by purse seine vessels consists primarily of skipjack tuna (*Katsuwonus pelamis*), with smaller catches of yellowfin tuna (*Thunnus albacares*) and bigeye tuna (*Thunnus obesus*). The fleet's annual catches in 1998-2009, by species, are shown in Table 1.

Table 1. Catches in the U.S. WCPO purse seine fishery, 1998-2009.

Year	Skipjack tuna (mt)	Yellowfin tuna (mt)	Bigeye tuna (mt)	Total catch (mt)
1998	131,573	37,678	5,377	174,628
1999	129,262	34,529	18,694	182,485
2000	81,368	29,961	13,886	125,215
2001	85,539	24,143	6,176	115,858
2002	88,535	27,191	4,889	120,615
2003	62,907	20,079	4,470	87,456
2004	47,896	14,492	5,031	69,419
2005	62,379	17,685	6,108	86,172
2006	55,633	8,448	4,364	68,445
2007	60,641	3,938	7,625	72,204
2008	not avail.	not avail.	not avail.	196,000
2009*	not avail.	not avail.	not avail.	267,000

* Preliminary estimate.

Sources: Lawson, T., 2008 (for 1998-2007) and OFP SPC, 2010 (for 2007-2008).

3.3. Economic characteristics

The fish caught by the U.S. WCPO purse seine fleet are frozen on board and either delivered directly to canneries or transshipped to carriers that deliver them to canneries. Deliveries are made to canneries in both the United States (Pago Pago, American Samoa) and other nations, particularly Thailand, and those canneries take deliveries from both U.S. vessels and vessels of other nations. The canned product then enters global markets.

The typical past practice of the fleet's vessels was to be based in Pago Pago and to land most of their catches there. That continues to be the case for some vessels, but as discussed further in section 7.3, many of the recent fishery entrants are using a different operational business model, in which they transship much or most of their catch in ports closer to the main fishing grounds, such as Pohnpei and Majuro, from which the catch is transshipped to ports with canneries.

The amounts of tuna landed by the fleet in 2008, broken down by where the catches are first offloaded, are shown in Table 2. The U.S. port of Pago Pago received 40 percent of the fleet's deliveries. The remaining 60 percent was offloaded in foreign ports, led by the Republic of the Marshall Islands. Discrepancies between the estimates in Table 2 and those shown in Table 1 may be due to the use of different data sources and/or different as-of dates of the source data. Preliminary data for 2009, which cover landings for roughly the first half of the year, show Pago Pago receiving 31 percent of the fleet's deliveries, a small portion of which was transshipped

onward. The remaining 69 percent was offloaded in foreign ports, led by the Federated States of Micronesia (USCG and NMFS, 2010).

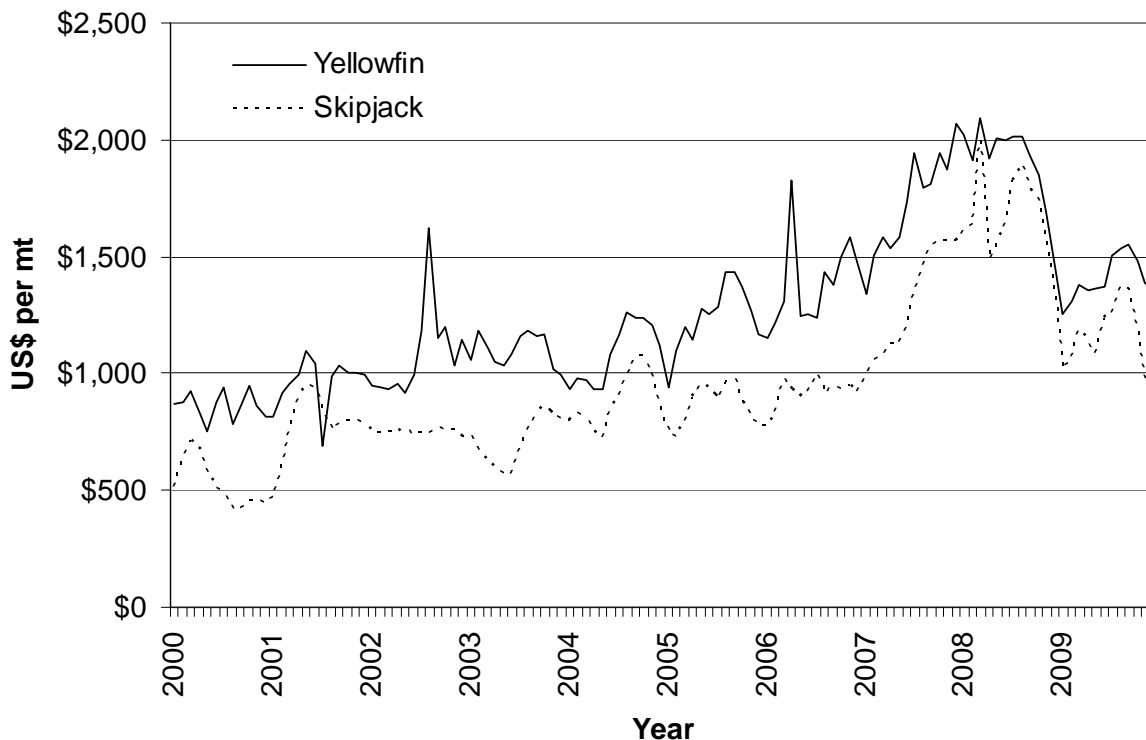
Table 2. Tuna landings by U.S. WCPO purse seine vessels, 2008.

Landing port	Total tuna landings (mt)	Percent of total
U.S. ports		
Pago Pago, American Samoa	76,548	40.0
Foreign ports		
Majuro, Republic of the Marshall Islands	46,381	24.2
Pohnpei, Federated States of Micronesia	25,641	13.4
Rabaul, Papua New Guinea	12,198	9.0
Honiara, Solomon Islands	14,713	7.6
Tarawa, Republic of Kiribati	4,552	2.4
Wewak, Papua New Guinea	4,272	2.3
Bangkok, Thailand	1,675	0.9
Noro, Solomon Islands	464	0.2
Total	191,480	100.0

Source: USCG and NMFS, 2010.

Prices for canning-grade yellowfin tuna and skipjack tuna over the last 10 years are shown in Figure 5. Bigeye tuna prices can be assumed to be about the same as those for yellowfin tuna. These Bangkok prices are not equivalent to ex-vessel prices for the U.S. WCPO purse seine fleet, which engages in several product delivery modes, but they are indicative.

Figure 5. Bangkok canning-grade prices, monthly averages from January 2000 through December 2009 (source: Havice et al., 2010).



The most recent detailed examination of costs and revenues in the fleet was conducted in 1998. Indicative per-vessel revenue and cost estimates from that study are summarized in Table 3. The composition of the fleet, as well as its operations, has changed significantly since 1998, so these figures should be interpreted with caution. Note that the 1998 gross revenue per vessel of \$4.7 million given in Table 3 is equal to about \$6.1 million in 2009 dollars.

Table 3. Indicative revenues and costs in the U.S. WCPO purse seine fleet in 1998

Component	Annual value (1,000 \$; in 1998 dollars)	Percent of total costs
Gross revenue	\$4,700	—
Fixed costs	\$2,557	57
Variable costs	\$1,921	43
Labor costs	\$1,055	24
Fuel	\$700	16
Total costs	\$4,478	100
Net revenue / income	\$222	—

Source: McCoy and Gillett, 1998.

4. Problem Statement

As the number of licenses issued is approaching the maximum number of licenses allowed under the Treaty, there is a need for NMFS, on behalf of the Secretary, to take action to set up an efficient license allocation system that includes objective criteria to be used by NMFS in prioritizing among license applicants. Existing license application procedures need to be modified to support the proposed allocation system and to provide license holders and prospective license applicants with a clear and certain regulatory process. To enhance the utility of VMS for fisheries management, the VMS requirements under the SPTA need to be modified to ensure that the VMS units used on licensed vessel are compatible with NMFS' VMS as well as the Treaty Administrator's VMS.

5. Proposed Regulatory Action

Section 973g of the SPTA provides for the Secretary of Commerce (Secretary) to establish a system of allocating licenses in the event more applications are received than there are licenses available. In part because the number of licenses issued is approaching the number of licenses available under the Treaty, NMFS proposes to establish such a system.

Section 973g of the SPTA also provides for the Secretary to establish procedures for vessel operators ("operator" is defined under the SPTA to mean any person who is in charge of, directs, or controls a vessel, including the owner, charterer, and master) to request from the Secretary licenses to fish in the Treaty's Licensing Area. Such procedures have been established by NMFS, on behalf of the Secretary, at 50 CFR 300.32. In order to accommodate the allocation system that this proposed rule would establish, the proposed rule would also modify the procedures used by applicants to request licenses and the procedures used by NMFS to process those requests. The proposed modifications to the procedures are designed in part to provide license holders and prospective license applicants with a clear and certain regulatory process. Finally, the proposed action would modify requirements related to type-approval of VMS units. These three elements of the proposed action are described in detail below.

5.1. License application and review procedures

The FFA, as Treaty Administrator, issues licenses only to vessels for which the license applications have first been approved by NMFS on behalf of the Secretary. Licenses are issued on an annual basis, with the licensing period starting June 15th of each year. This proposed rule would establish license application and review procedures up to the point of approval by NMFS for forwarding to the Treaty Administrator. The proposed action would do the following:

(1) The distinction between joint venture licenses (licenses for fishing activities designed to promote maximization of the benefits generated for the PIPs, of which there are five available) and "general licenses" (the remaining licenses, of which there are 40 available) would be clarified, and separate application procedures would be established for the two license types.

(2) To obtain approval from NMFS for a joint venture license, in addition to submitting a complete application as for a general license, an applicant would have to obtain the initial approval of the FFA, as Treaty Administrator, as well as documentation from the relevant PIP or PIPs providing concurrence for the issuance of a joint venture license for the vessel. Upon receipt of a complete application, NMFS would process and approve it as it would for a general license except that it would not issue pre-approvals, as described below for general licenses. NMFS would approve applications for joint venture licenses on a first-come, first-served basis, based on the date of initial approval by the FFA.

(3) In order to provide applicants with earlier and greater certainty on the status of their general license applications for a given licensing period, applicants would be able to seek and obtain “pre-approvals” from NMFS through the submission of expressions of interest earlier than the submission of complete applications. A pre-approval would serve to temporarily reserve an approval spot until the time that complete applications are due. Whether or not a pre-approval is issued for a given application would depend on the outcome of the allocation process, described below. Because of time restrictions, pre-approvals would not be issued for the 2011-2012 licensing period.

(4) The proposed rule would establish dates by which expressions of interest and complete applications for general licenses must be received by NMFS. For a given licensing period – with the exception of the 2011-2012 licensing period, for which pre-approvals would not be issued – the deadline for submitting expressions of interest would be June 1 of the year preceding the year in which the licensing period begins. The deadline for submitting complete applications would be February 5 of the year in which the licensing period begins. Comparable due dates would be established for applications for licenses that become available in the middle of a licensing period.

(5) The proposed rule would establish dates by which NMFS would decide on pre-approvals and approvals for general licenses and notify applicants of those decisions. With the exception of the 2011-2012 licensing period, for which pre-approvals would not be issued, NMFS would pre-approve applications by July 16 of the year preceding the year in which the licensing period begins, and notify all applicants of its decisions within 10 days. NMFS would approve applications by March 7 of the year in which the licensing period begins, and notify all pre-approved applicants of its decisions within 10 days.

(6) A process would be established through which applicants could appeal NMFS’ pre-approval and approval decisions. Appeals would have to be submitted in writing within 14 days of the notice of NMFS’ decision. The initial decision on an appeal would be made by a designee of the NMFS Pacific Islands Regional Administrator, within 30 days of the appeal. The applicant would be able to request a review of the initial decision within 10 days of notice of the initial decision. The final decision on an appeal would be made by the Assistant Administrator for Fisheries, NOAA, or a designee, within 30 days of the request for review. The final decision would constitute the final administrative action of the Department of Commerce.

(7) Because the proposed rule would likely not become effective in time for the new procedures to be fully applied for the 2011-2012 licensing period, interim procedures would be established for that licensing period. Those procedures would not include any provisions regarding pre-approvals. Instead, the application process would start with the February 5, 2011, deadline for submitting complete applications.

5.2. License allocation system

In the event more applications are received than there are licenses available, the proposed rule would establish the following procedures:

(1) The following criteria would be established for prioritizing applicants for general licenses. Based on this prioritization, NMFS would issue pre-approvals for up to 40 applications for general licenses. First priority would be given to applications for vessels that have a valid Treaty license on the due date for expressions of interest. Also included in the first priority pool would be applications for vessels licensed in the current or previous two licensing periods but that were lost or were destroyed. In other words, first priority would be given to license renewals, provided that the vessel is the same. In the event that a licensed vessel is lost or destroyed, the applicant would be reserved an approval spot for the licensing period in which the vessel was lost and for the two subsequent licensing periods, provided that the ownership of the replacement vessel is identical to the ownership of the lost vessel. Second priority would be given to applicants according to a ranking scheme in which points are assigned to an applicant as follows:

- (a) 15 points would be assigned if the vessel has been issued, or will be issued by the time application approvals are issued, a valid U.S. Coast Guard Certificate of Documentation endorsed with a fishery endorsement (among the eligibility criteria for receiving a fishery endorsement are that the vessel must have been built in the United States, and if rebuilt, it must have been rebuilt in the United States);
- (b) one point would be assigned for each licensing period, starting with the 1988-1989 licensing period, in which a Treaty license had been issued for the vessel, for a total of no more than 10 points;
- (c) one point would be assigned for each calendar year in which at least 3,000 mt of fish were landed or transhipped from the vessel in U.S. ports (including ports located in any of the U.S. States, Commonwealths, territories, or possessions) starting in 1988 and ending in the previous calendar year, for a total of no more than 5 points; and
- (d) if application of the foregoing criteria results in a tie, priority would be given to the vessel from which the greatest amount of fish, by weight, was landed or transhipped in U.S. ports (including ports located in any of the U.S. States, Commonwealths, territories, or possessions) starting in 1988 and ending in the year prior the year in which the application is received. If there is still a tie, priority would be given by a lottery conducted by the NMFS Pacific Islands Regional Administrator.

(2) With respect to joint venture licenses, NMFS would not pre-approve applications or prioritize applications using the scheme established for general licenses. Instead, NMFS would approve joint venture license applications on a first-come, first-served basis, based on the date of initial approval by the FFA.

(3) With respect to the interim procedures that would be established for the 2011-2012 licensing period, NMFS would apply the same prioritization scheme and criteria as it would for subsequent licensing periods, but it would do so only after receiving the complete applications that would be due February 5, 2011.

The proposed rule would clarify that application approvals from NMFS are not transferable among vessel owners or operators or applicants. It would, however, provide for limited transferability of application approvals among vessels. Specifically, if a general or joint venture license has been issued to a vessel and has been valid for at least 365 consecutive days and all required fees to the FFA for the vessel have been paid, the vessel operators would be able to request that the license be transferred to a different vessel, provided that the ownership of the replacement vessel is identical to that of the licensed vessel and the transferee vessel otherwise meets the requirements for licensing under 50 CFR part 300 and the SPTA.

Until NMFS issues a final rule to establish a system for allocating licenses and/or to modify the license application and processing procedures and that rule becomes effective, NMFS will continue its practice of processing and forwarding completed applications to the Treaty Administrator based upon order of receipt.

5.3. Modifications to VMS requirements

The proposed rule would modify the regulations at 50 CFR 300.45, which relate to the installation, carrying, and operation of VMS units on vessels licensed under the SPTA. The regulations currently require that the VMS unit installed and carried on board the vessel consist of hardware and software that are type-approved by the Treaty Administrator. This is consistent with the terms of the Treaty, which mandates that the VMS units used on licensed vessels be of a type approved by the Treaty Administrator. The regulations would be modified to require that the hardware and software that constitute the VMS unit be type-approved by both the Treaty Administrator and NMFS. The purpose of the proposed change is to ensure that the VMS units used in the fishery are compatible with, and meet the technical standards of, the vessel monitoring system administered by NMFS as well as the one administered by the Treaty Administrator.

NMFS publishes separately lists of the VMS units that it has type-approved. The current type-approval lists can be obtained from the NOAA Office of Law Enforcement, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910; by telephone at 888-210-9288; or by fax at 301-427-0049.

6. Alternatives

Several alternatives to the proposed action are considered. Each alternative characterizes a comprehensive set of actions with specific features associated with the license application and review procedures and the license allocation system.

The Treaty provides for the issuance of two types of licenses – general licenses, of which 40 are available, and joint-venture licenses, of which five are available. Joint-venture licenses require the involvement and approval of one or more PIPs. No joint venture licenses have been issued to date in the fishery. General licenses are issued by the FFA on behalf of the PIPs, and there are specific eligibility requirements under the Treaty for all licenses. For example, the vessel must be on good standing on the FFA Regional Register. However, the PIPs cannot deny or choose among general license applicants that meet the eligibility requirements under the Treaty. Thus, while PIPs have very much control over who enters the fishery under joint venture arrangements, they have comparatively little control with respect to general license applicants. As such, and as provided in the SPTA, the United States Government has the responsibility to establish an allocation system for general licenses, should one be necessary. Accordingly, this proposed action considers alternatives only with respect to prioritizing general license applications. The proposed application and review procedures for joint venture licenses are the same under all the action alternatives, and no further analysis of that aspect of the proposed action is provided in the RIR.

Initially, alternatives were also considered for the VMS unit requirements that are part of the proposed action, but recent regulatory changes have made consideration of such alternatives a moot exercise. The alternatives initially considered had to do with the length of a grace period that could be given prior to putting the requirements into effect. For example, grace periods of zero, two, and four years were being contemplated. However, NMFS recently published a final rule under the Western and Central Pacific Fisheries Convention (WCPFC) Implementation Act (75 FR 3335; January 22, 2010) that establishes VMS requirements for U.S. vessels used to fish on the high seas in the Convention Area. Among the requirements is that the vessels carry VMS units that are type-approved by NMFS. The type-approvals under that rule are expected to be the same as those that would be established under this rule because they are both for the purpose of tracking vessels in the NMFS VMS. Because all U.S. vessels operating under the Treaty fall are also subject to the new Convention-mandated requirements, they are, for all practical purposes, already subject to the VMS requirements that are part of this proposed action. The Convention-mandated requirements are effective April 21, 2010, and do not include a grace period. As such, the VMS requirements of this proposed action are expected to have no effects on individual fishing operations or any economic effects at all. The proposed VMS requirements are implicitly included as part of each of the action alternatives, but because they would have no effect, they are not explicitly described below or discussed further.

6.1. Alternative 1 (no action)

NMFS would not issue any new regulations under the no-action alternative. There would be no change to the current regulations or practices regarding licensing application and review

procedures. NMFS would continue forwarding complete applications to the FFA on a first-come, first-served basis.

6.2. Alternative 2 (proposed action)

See section 5.

6.3. Alternative 3 (ranking criteria in favor of U.S. ports for tuna landings)

This alternative would be similar to Alternative 2 except the relative weights given to each criterion in the second tier of the ranking scheme for general license applications would be different. Specifically, more weight would be placed on the amount of fish landed or transshipped in U.S. ports and less weight would be placed on whether the vessel has a fishery endorsement on its U.S. Coast Guard Certificate of Documentation. First priority would be given to license renewals, just as in Alternative 2. But the points assigned to the second-priority applications would be as follows (differences from Alternative 2 are highlighted in bold):

- (a) **5 points** would be assigned if the vessel has been issued, or will be issued by the time application approvals are issued, a valid U.S. Coast Guard Certificate of Documentation endorsed with a fishery endorsement (among the eligibility criteria for receiving a fishery endorsement are that the vessel must have been built in the United States, and if rebuilt, it must have been rebuilt in the United States);
- (b) one point would be assigned for each licensing period, starting with 1988-1989 licensing period, in which a Treaty license had been issued for the vessel, for a total of no more than 10 points;
- (c) one point would be assigned for each calendar year in which at least 3,000 mt of fish were landed or transshipped from the vessel in U.S. ports (including ports located in any of the U.S. States, Commonwealths, territories, or possessions) starting in 1988 and ending in the previous calendar year, for a total of no more than **15 points**; and
- (d) if application of the foregoing criteria results in a tie, priority would be given to the vessel from which the greatest amount of fish, by weight, was landed or transshipped in U.S. ports (including ports located in any of the U.S. States, Commonwealths, territories, or possessions) starting in 1988 and ending in the year prior the year in which the application is received. If there is still a tie, priority would be given by a lottery conducted by the NMFS Pacific Islands Regional Administrator.

6.4. Alternative 4 (licensing moratorium)

Under this alternative, only vessels that receive licenses for the 2011-2012 licensing period would be eligible to participate in the fishery in the future. The procedures used to approve applications for the 2011-2012 would be similar to those that would be used generally under Alternative 2. Specifically, complete applications would have to be submitted by February 5,

2011, for the 2011-2012 licensing period. The criteria to be used for prioritizing among applicants, as well as the application and review procedures, would be identical to those under Alternative 2. For subsequent licensing periods, approvals would be issued only for vessels that had a license for the 2011-2012 licensing period, and only if a complete application is submitted no later than June 1 in the year in which the licensing period begins. A vessel that did not have a license for the 2011-2012 licensing period would not ever be eligible for a license in the future.

6.5. Alternative 5 (ranking scheme only)

This alternative would be to the same as Alternative 2 except that license renewals (including vessel replacements for lost vessels) would not be given priority over other applicants; all general license applications, including renewals, would be prioritized according to what in Alternative 2 are the second-priority ranking criteria.

7. Economic Effects of the Proposed Action and Alternatives

This section describes the expected effects of the alternatives. The analyses consider four types of effects: changes in net benefits within a benefit-cost framework; distributional changes in net benefits; changes in income and employment; and cumulative impacts.

7.1. Changes in net benefits

The analysis is limited to examining changes in net benefits to the national account; changes in net benefits that occur to foreign interests are not relevant in the context of this RIR. Changes in net benefits to the nation within a benefit-cost framework are measured by the difference in the present value of the discounted stream of net benefits under the regulatory action as compared to the stream under no-action. Variations in economic benefits and costs in both the private and public sectors are important with respect to net benefits to the nation; effects in both sectors are accounted for in this analysis to the extent possible. Net benefits accrued to consumers (consumer surplus) reflect the difference between the amount consumers are willing to pay for products or services and the amount they actually pay, while net benefits accrued to producers (producer surplus) measure the difference between the amount producers actually receive for providing products or services and the economic cost producers bear to do so. In the case of fishing harvesting operations, producer surplus can be measured by the difference between gross revenues and operating costs.

As an introduction to the analysis, it is highlighted that none of the alternatives, with the exception of the licensing moratorium under Alternative 4, would be expected to affect the number of vessels in the U.S. purse seine fleet. The alternative actions would affect only *which* vessels are in the fleet. All the alternatives, including the no-action alternative, would allow for 40 vessels to operate in the fishery under general licenses. The number of vessels that actually participate in the fishery would be driven primarily by economic conditions in the fishery, not by this proposed action. Because this action is not expected to have any affect on vessel numbers, and it would not establish or relax any direct controls on fishing effort, catches, or fishing

practices, the magnitude of this proposed action's potential economic effects is fairly limited. Any effects in terms of net costs and benefits would necessarily be fairly subtle, stemming from, for example, differences among the alternatives in the types of vessels that would be favored and their relative efficiencies in terms of catching fish and earning revenues. Again, the exception is the licensing moratorium under Alternative 4, which would be expected to result in a gradual shrinking of the fleet as vessels age and/or move to other fisheries. Given the subtle nature of the expected economic effects of this proposed action, and the difficulty in predicting the characteristics and performance of vessels that enter the fishery under the various alternatives, this analysis is necessarily mostly qualitative rather than quantitative, and as described further below, it is somewhat speculative in some respects.

Alternative 2 (proposed action)

Consumer surplus:

Tuna prices in U.S. may fluctuate throughout the year in accordance with changes in market supply and demand. It does not appear that prices would be influenced by the proposed action because tuna caught by U.S. WCPO purse seine vessels accounts for only a small percentage of all the tuna products in the U.S. markets. In addition, viable global trade flows of tuna and tuna products through U.S. markets make imported tuna products always easy to find as substitutes for U.S. domestically produced ones. For these reasons, this alternative is unlikely to have any observable impact on consumer surplus, as price and quantity of tuna products available for sale to U.S. consumers are unlikely to be affected.

Producer surplus:

The additional license application procedures that would be established under this alternative – specifically, the option to submit an “expression of interest” prior to submitting a complete application – would bring costs to license applicants. However, the additional requirements are minimal for those renewing licenses (approximately 15 minutes per year). For new entrants the procedures would be more burdensome (approximately 2 hours per year), but the costs associated with this burden would be very small compared to overall operating costs. They would not be large enough to either act as a disincentive to prospective applicants or to bring measurable costs to individual businesses or to the fishery as a whole.

The proposed license allocation system and license application procedures under this alternative would directly affect which vessels participate in the fleet only in the case that more applications are received than there are licenses available. Otherwise, the outcome of this alternative in terms of which vessels participate in the fishery would be identical to the no-action alternative, under which license approvals would be given on a first-come, first-served basis. It is not possible to predict whether more than 40 applications will be received for any given year. Given the recent increase in the fleet size (to as high as 39 in 2009, and 37 at the time of this writing), it certainly appears possible.

Regardless of whether there are every more than 40 interested vessel owners, this alternative, by giving first priority to applicants that are already in the fishery (license renewals), would give license holders greater assurance of continued participation in the fishery.¹ The behavior of fishery participants would be affected accordingly. This greater durability in the privileges given to license holders would encourage them to plan and execute their fishing and business operations on a longer-term basis.² This would be expected to result in greater profitability in these operations. Although greater profitability in individual fishing businesses could lead to greater net benefits in the fishery as a whole, those gains could be countered by the fact that once there are 40 general license holders, new fishing businesses would have a more difficult time entering the fishery than under the no-action alternative. If prospective entrants are more productive and/or efficient than those already in the fishery, the overall effect on producer surplus in the fishery would likely be negative. Thus, a key question is whether (excluded) prospective fishery entrants would tend to be more or less profitable than (included) fishery participants. This question is difficult to answer with certainty, but it is explored further below.

In the case that there are more 40 interested vessel owners, applicants would first be prioritized accordingly to whether they are already in the fishery, as discussed above, and second, according to a ranking scheme. The ranking scheme includes point assignments based on criteria that include: (a) whether the vessel is eligible for a fishery endorsement on its US Coast Guard Certificate of Documentation (the primary requirement for which is that the vessel be built in the United States, or if rebuilt, then rebuilt in the United States); (b) historical participation in the Treaty fishery; and (c) historical landings. Application of this ranking scheme would likely lead to positive net benefits in the fishery if it has the effect of favoring operations that are more productive and/or efficient (profitable) than those that would be favored under the no-action alternative or other alternatives. In this regard, it is important to note that participation in the WCPO purse seine fishery is a costly endeavor – vessels cost a minimum of \$10 million.³ The owners and operators of vessels in the fleet tend not to be small independent businesses. Rather, they tend to be large companies with ample experience in the fishery and with the means to hire expert captains and crew. In other words, the fishery does not attract novices, and it should not

¹ Although first priority would be given to renewing *vessels* rather than to renewing vessel owners or operators (all the prioritization criteria relate to vessels, not people), the transferability-among-vessels provisions (which would allow a licensed vessel owner/operator to replace the vessel, with certain restrictions) under this alternative would, again, provide greater certainty of future participation than under the no-action alternative.

² It should be noted that in the larger context of the Treaty, the future for U.S. purse seine operators is not very certain, as the Treaty expires in 2013. The history of the Treaty since its inception in 1988 suggests that renewal of the Treaty in 2013 is likely and that its provisions will not change substantially. On the other hand, current circumstances, particularly the PIPs' desire to bring the U.S. purse seine fleet into the Vessel-Day Scheme administered under the Nauru Agreement (under which the number of fishing days is controlled rather than the number of fishing vessels), suggest that the future of the Treaty and its provisions is less certain than it has been for many years. This uncertainty in the future of the Treaty would lessen the certainty brought under this proposed action, and thus mitigate the beneficial effects of the action. However, this circumstance is common to all the alternatives.

³ In 2002, the cost of building a new vessel was estimated to probably exceed \$15-18 million, depending upon the country where it might be built (Gillett et al., 2002).

be assumed that businesses already in the fishery have any advantage in terms of expertise over prospective participants.

Although prospective businesses cannot be distinguished from historical participants with respect to experience or expertise, the nature of the proposed allocation system is such that there are potentially important differences among the vessels themselves, and the remainder of this analysis focuses on these potential differences.

Criterion (a) identified above would favor – relative to the no-action alternative – vessels built in the United States (and if rebuilt, then rebuilt in the United States). Taiwan is the source of the fleet's 19 youngest vessels, the oldest of which was built in 2002. Twelve of the fleet's remaining 18 vessels were originally built in the United States. The youngest of those 18 vessels was built in 1984 and the youngest U.S.-built vessel in the fleet was built in 1982. Of the 37 vessels currently in the fleet, only nine have fishery endorsements. This trend is an indication that U.S.-built vessels are more expensive than equivalent vessels built abroad. In fact, the United States does not currently have a purse seine vessel building industry to speak of. Favoring U.S.-built vessels in this proposed license allocation system might contribute a little competitive advantage to the U.S. boat-building industry, but the advantage would likely be very small and have little influence. Instead, the more discernible effect would be to favor older (U.S.-built) vessels over younger (foreign-built) vessels. In short, criterion (a) would favor vessels that are not of a type preferred by recent entrants in the fishery, and thus might bring adverse economic impacts.

On the other hand, by favoring vessels with fishery endorsements, criterion (a) would favor vessels that are allowed to be used for fishing in the U.S. EEZ. Vessels without such endorsements have smaller fishing grounds available to them. The importance of the U.S. EEZ is not great – as indicated in section 3.2, about 8 percent of the fleet's catches are taken there. And again, the fact that most fishery participants – and all the recent entrants – are using vessels without fishery endorsements suggests that the economic benefits to individual operations of using a foreign-built vessel outweigh the costs. In sum, it appears that the heavy weighting given to criterion (a) in this alternative would more likely bring net costs than net benefits in the harvesting sector, relative to no action.

Criteria (b) and (c) would favor vessels with longer histories; the greater the number of years in the Treaty fishery and the greater the number of years with landings at U.S. ports of at least 3,000 mt, the greater the number of points assigned to a vessel. Thus, relative to the no-action alternative, this alternative would tend favor older vessels over newer vessels. Newer vessels tend to be more fuel efficient than older vessels, and because fuel costs comprise a substantial portion of fishing costs, operations using newer vessels probably have the potential to be more economically efficient than those using older vessels. On the other hand, newer vessels are more costly – other factors being equal – than older vessels. In any case, the fact that these criteria would encourage vessel owners and operators to obtain – or not upgrade from – relatively old vessels means that they would have the effect of discouraging the entry of new and what might be relatively efficient vessels into the fleet. This aspect of this alternative, like criterion (a),

would thus be expected to result in net losses in the harvesting sector, rather than net benefits, relative to no action.

Criterion (c) would favor vessels with long histories of large U.S. landing amounts, and thus might be seen as encouraging high productivity. But this criterion applies only to applicants not already in the fishery, so it would exert little influence on operators in the fishery and thus would not be expected to have any effect on productivity in the fishery.

In summary, one aspect of this alternative – the firmer future for fishermen that gain entry into the fishery – would be expected to bring positive net economic benefits, but those benefits would be mitigated by the expected economic losses that are likely to occur by application of the second-tier prioritization criteria. It cannot be predicted whether the overall effects on producer surplus would be positive or negative.

Public sector costs:

Implementation of this alternative would result in administrative costs incurred by the federal government. The alternative would add a step in the application process – the option for prospective applicants to submit expressions of interest prior to submitting the complete application each year. The expressions of interest would be reviewed by NMFS with respect to the prioritization scheme (if there are more than 40 expressions of interest). The annual cost of reviewing expressions of interest is estimated to be about \$1,000. The alternative would also establish a two-step appeals process for applications that are denied. It is not possible to predict how often this process would be used, so the cost of administering the process cannot be estimated, but it would likely be no more than \$10,000 per year, on average.

Summary:

This alternative would likely: (1) have no effect on consumer surplus; (2) have either positive or negative effects on producer surplus; and (3) bring modest costs in the public sector. The overall effect in terms of net benefits cannot be predicted either in direction or magnitude.

Alternative 3 (ranking criteria in favor of U.S. ports for tuna landings)

The effects of this alternative in terms of consumer surplus and public sector costs would be the same as those under Alternative 2 (proposed action).

With respect to producer surplus, like Alternative 2, this alternative would be expected to bring positive benefits due to the more certain future afforded to participants in the fishery. This alternative differs from Alternative 2 only in the criteria used in the second-tier of the prioritization scheme. Specifically, U.S.-built vessels would be rewarded less than under Alternative 2 and historical landings would be given more weight. Thus, the expected tendency of criterion (1) to bring adverse economic effects would be lessened, and the expected tendency for criteria (3) to bring adverse economic effects would be heightened. The overall effect in

terms of net benefits compared to either Alternative 2 or the no-action alternative cannot be predicted.

Alternative 4 (license moratorium)

The effects of this alternative in terms of consumer surplus would be the same as those under Alternatives 1 (no action), 2 (proposed action), and 3. Its effects in terms of public sector costs (i.e., the administrative costs of processing license applications) would be less than those under Alternatives 2 and 3, as well as under the no-action alternative, because after the initial application process for the 2011-2012 licensing period, there would not be any need to prioritize applications, and the number of applications would diminish over time.

With respect to producer surplus, this alternative would have substantially different impacts than Alternatives 1, 2, and 3. The number of fishery participants would diminish over time as vessels age and fishery participants switch to other fisheries or opportunities, so production would decrease. Assuming that the fishery brings net benefits to the nation under the status quo, such a decrease in production would bring a decline in producer surplus. The rate of diminution of the fleet cannot be predicted, but producer surplus would almost certainly be less than under any of the other alternatives within a few years.

Alternative 5 (ranking scheme only)

The effects of this alternative in terms of consumer surplus would be the same as those under all the other alternatives. Its effects in terms of public sector costs (i.e., the administrative costs of processing license applications) would be greater than under the no-action Alternative, the same as under Alternatives 2 and 3, and greater than those under Alternative 4.

Under this alternative, having a current license would not be an advantage, but having a U.S.-built vessel, having a long history of participation in the fishery, and having a long history of landings at U.S. ports would be. The latter two criteria obviously overlap somewhat with the criterion of having a current license (i.e., most vessels currently in the fishery probably would score relatively high with respect to those two criteria). But the importance of having a U.S.-built vessel would be much greater under this alternative than under Alternative 2. Foreign-built vessels with a history in the fishery would be more likely to be replaced by U.S.-built vessels, particularly those with past history in the Treaty fishery or in other U.S. purse seine fisheries (or even foreign purse seine fisheries, if they have history of landings at U.S. ports, such as Pago Pago, where foreign vessels are allowed to land fish). As discussed with respect to Alternative 2, favoring U.S.-built vessels over foreign-built vessels would tend to have negative effects in terms of producer surplus, and those negative effects would be greater under this alternative than under Alternative 2. Also, because this alternative would bring less durable privileges to fishery participants than Alternative 2, it would not encourage long-range planning like Alternative 2 would, and the positive economic effects of such planning would thus be less than under Alternative 2. However, this alternative would likely be more positive in this respect than the no-action alternative, under which future participation in the fishery would be relatively unsure.

7.2. Distributional changes in net benefits

None of the alternatives is expected to have any distributional effects among different fisheries or geographical areas. The proposed action applies only to the U.S. WCPO purse seine fishery. Other U.S. fishing fleets, including the longline and troll fleets, are not subject to the Treaty's licensing requirements.

7.3. Changes in income and employment

As described in section 7.1, some of the alternatives could have effects in terms of productivity in the U.S. WCPO purse seine fishery (but, as described there, the direction and magnitude of such effects are difficult to predict). To the extent that productivity is greater under one alternative as compared to another, the upstream and downstream impacts of the alternative would also be expected to be greater. The more active and productive a vessel, the more upstream economic activity it is likely to generate, including vessel provisioning (fuel and supplies, etc.) and maintenance of the vessel and its equipment. Similarly, the greater the catch, the greater the downstream economic impacts in the fish processing sector (and in some cases, transshipping activity). Such upstream and downstream activities generate employment and income (but as described below, not all such activity occurs in the United States).

The proposed action (Alternative 2) and, to differing extents, Alternatives 3 and 5, would favor U.S.-built vessels over foreign-built vessels. This might be expected to give a competitive advantage to the U.S. boat-building industry, relative to its foreign competitors. To the extent that this spurred the domestic industry, it would bring positive benefits to the nation in terms of income and employment. However, as noted in section 7.1, the advantage given to the U.S. boat-building industry by this rule would likely be very small and have little, if any, discernible influence on the industry.

It should be noted that there are two fairly distinct business models used in the WCPO purse seine fishery. The first and more traditional model is one of landing most of the catch in Pago Pago, American Samoa, directly to the canneries (of which there were two prior to 2009, but there is currently one). The second model relies more on transshipping the catch to carrier vessels at ports relatively proximal to the main fishing grounds, such as in the Marshall Islands and the Federated States of Micronesia. The carrier vessels then deliver the catch to various ports with canneries. Because some of the delivery ports used in the latter business model are foreign ports, such as Bangkok, the upstream and downstream economic impacts (for the United States) under each of the two business models are quite different. Under the first, much of the vessel provisioning, vessel maintenance, and fish processing activity is done in the United States. Under the first, much of this activity takes place in foreign countries.

The second business model tends to be used by many of the recent entrants in the fishery, while the first model is used more by the businesses with longer histories in the fishery. This attribute of history-in-the-fishery corresponds closely, of course, with two of the criteria that would be applied in the proposed license application prioritization scheme. Furthermore, many of the

recent fishery entrants have foreign-built vessels, while the longer histories participants tend to have U.S.-built vessels. These correlations might suggest that the proposed allocation system could have upstream and downstream economic impacts. However, these are merely correlations: there is a tendency for businesses with shorter histories in the fishery and with foreign-built vessels to use the second business model, but it does not appear that there is anything functional about this observed relationship. In other words, there does not appear to be anything hindering traditional fishery participants from adopting the second business model or hindering recent fishery entrants from adopting the first business model. For this reason, it does not appear appropriate to conclude that any of the alternatives would be different in terms of impacts on income or employment.

7.4. Cumulative effects

Cumulative effects are the additive effects of this action and other existing and reasonably foreseeable actions (e.g., other fishery regulations). The cumulative effects of the proposed action can be described only qualitatively.

The U.S. WCPO purse seine fishery is subject to a variety of fishing regulations, including requirements under the SPTA to implement the provisions of the Treaty, requirements established under the WCPFC Implementation Act to implement the provisions of the WCPFC, requirements under the High Seas Fishing Compliance Act, and requirements under the Magnuson-Stevens Fishery Conservation and Management Act. This proposed action would modify and add to the licensing provisions already established under the SPTA. As described in section 7.1, the additional license application requirements would increase the existing compliance burden on license applicants.

This proposed action's VMS requirements would overlap completely with existing requirements under the WCPFC Implementation Act, so they would not contribute to the cumulative compliance burden or bring any cumulative impacts.

With respect to reasonably foreseeable actions, management of the U.S. WCPO purse seine fishery will be driven both by domestic mandates and international fisheries agreements and decisions. In the former category, the most relevant statutes are the MSA for federal fisheries generally and the Endangered Species Act with respect to threatened and endangered marine species. Possible future actions in this category include actions to prohibit U.S. purse seine vessels from being used to fish in portions of the U.S. exclusive economic zones around the territories of American Samoa and Guam and the Commonwealth of the Northern Mariana Islands. These actions are being considered by the Western Pacific Fishery Management Council and would be implemented under the MSA. These actions, which would constrain the fishing grounds available to the fleet, would bring adverse impacts on businesses in the U.S. purse seine fishery and would likely have adverse net economic effects in the fishery as a whole.

In the international arena, regional fishery management organizations like the Western and Central Pacific Fisheries Commission could make binding decisions, such as conservation and

management measures for particular fish stocks. Depending on the decisions, implementation by the United States of such decisions could bring either beneficial or adverse economic impacts to the U.S. WCPO purse seine fleet. No particular decisions can be foreseen at this time so their economic impacts cannot be predicted. Future changes to the Treaty could change the way the United States must govern its purse seine fleet. The Treaty expires in 2013 and negotiations are underway for its renewal. Possible outcomes of that process range from continuation of the status quo to a radically different regulatory regime. For example, the limit on purse seine vessel numbers could change from the current 40 to a different number, or the limit could be replaced altogether with another type of control, such as a limit on the number of fishing days that may be exerted by the U.S. purse seine fleet. Depending on the nature of the changes made the Treaty, the economic impacts on the U.S. WCPO purse seine fleet could be either positive or negative.

8. Determination of Significance under Executive Order 12866

NMFS has made the following determinations:

- (1) This rule is not likely to have an annual effect on the economy of more than \$100 million or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.
- (2) This rule is not likely to create any serious inconsistencies or otherwise interfere with any action taken or planned by another agency.
- (3) This rule is not likely to materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights or obligations of recipients thereof.
- (4) However, this rule is likely to raise novel or policy issues arising out of legal mandates, the president's priorities, or the principles set forth in E.O. 12866, as this rule would establish a novel system to allocate the limited number of licenses available in the U.S. WCPO purse seine fishery.

Based on these determinations, the rule considered in this RIR is a "significant regulatory action" for the purposes of E.O. 12866.

9. References

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