



Small Entity Compliance Guide

Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2009-2011 and Turtle Mitigation Requirements in Purse Seine Fisheries

July 2009

The National Marine Fisheries Service (NMFS) has issued regulations under the authority of the Western and Central Pacific Fisheries Convention Implementation Act for the U.S. purse seine fishery operating in the Western and Central Pacific Ocean. The regulations implement decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) that seek to reduce fishing mortality on bigeye tuna (*Thunnus obesus*), control fishing mortality on yellowfin tuna (*Thunnus albacares*), and mitigate interactions with sea turtles. The final regulations have been published in the *Federal Register* on August 4, 2009 (volume 74, No. 148 pages 38544-38558), and will be codified in the Code of Federal Regulations at 50 CFR Part 300.

This guide provides a plain-language summary of how owners and operators of affected purse seine vessels, and other affected entities, can comply with NMFS regulations and is issued in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996.

Regulations are subject to change, so this guide may become out of date. Any discrepancy between the contents of this guide and regulations will be resolved in favor of regulations published in the *Federal Register* and codified in the *Code of Federal Regulations*.

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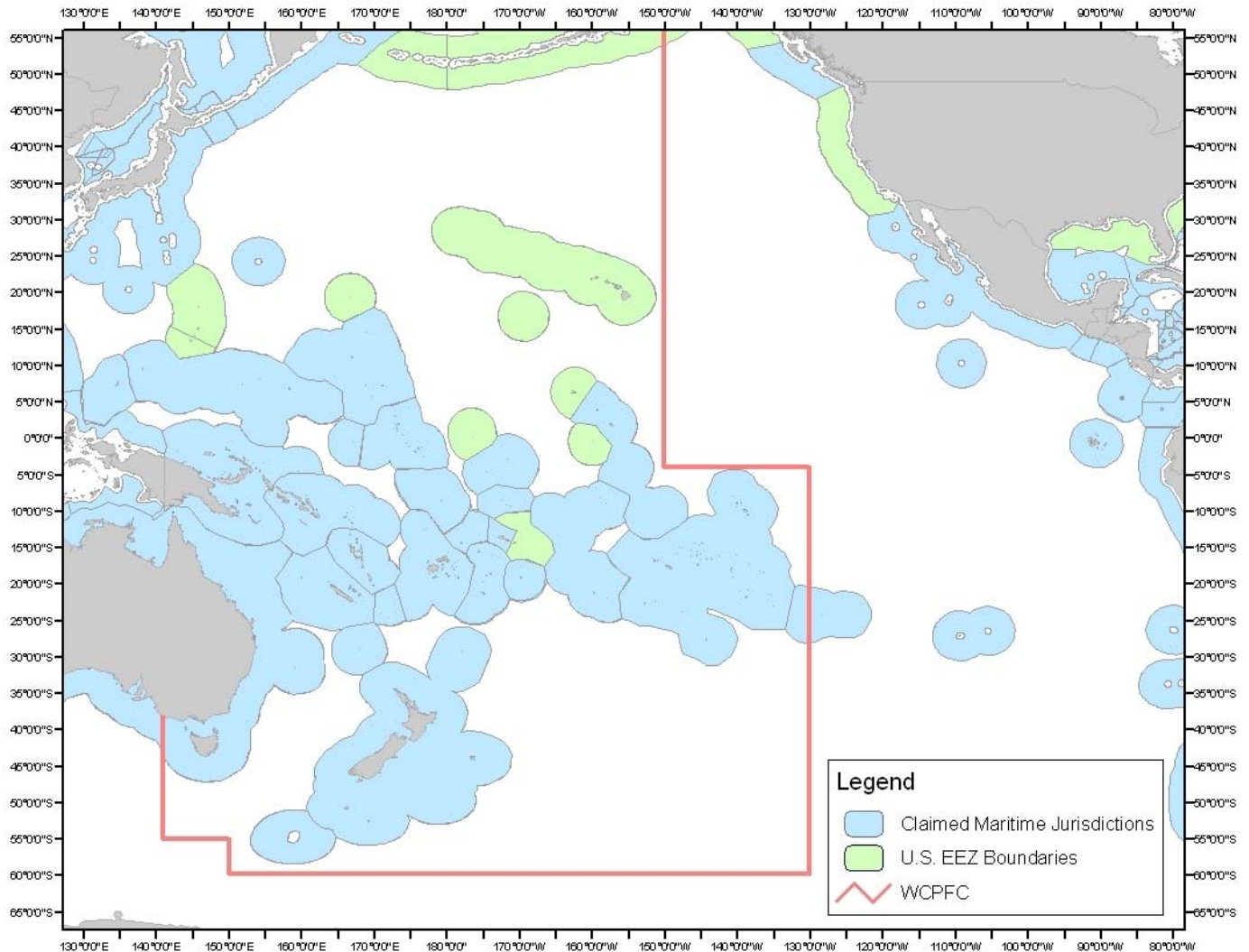
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Area of Effect

Each of the new requirements applies to either the entire area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention Area; Figure 1) or to specific areas within the Convention Area.

Figure 1. Convention Area: high seas (in white); areas under U.S. jurisdiction (in green); and foreign jurisdictions (“claimed maritime jurisdictions,” in blue)



Explanation of the Regulations

The new regulations fall into the following six categories:

1. *Fishing effort limits*
2. *Prohibition periods for use of fish aggregating devices (FADs)*
3. *High seas area closures*
4. *Retention of catch*
5. *Observer requirements*
6. *Sea turtle interaction mitigation requirements*

The requirements in each of these categories are described in detail below.

Category #1 Fishing Effort Limits

There are now limits on the total number of days that U.S. purse seine vessels are allowed to fish in the Convention Area within the area between 20° N. latitude and 20° S. latitude on the high seas and in areas under U.S. jurisdiction (which includes the U.S. exclusive economic zone and territorial sea) during the years 2009-2011. The limits are set for each one-year and two-year period, and the entire three-year period.

For each of the years 2009, 2010, and 2011, the limit is **3,882 fishing days**.

For each of the two-year periods (2009-2010 and 2010-2011) the limit is **6,470 fishing days**.

For the entire three-year period, the limit is **7,764 fishing days**.

Key Questions and Answers:

Question 1: To which vessels, exactly, do the limits apply?

Answer: The limits apply to fishing vessels of the United States equipped with purse seine gear.

Question 2: What is the definition of a fishing day?

Answer: "Fishing day" means any day in which a U.S. fishing vessel equipped with purse seine gear searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

Question 3: How will I know when a limit is reached?

Answer: NMFS will monitor the number of fishing days using information collected in vessel logbooks and other available sources. When NMFS determines that a limit will be reached on a specific future date, NMFS will issue a notice in the Federal Register announcing that the purse seine fishery will be closed from that specific future date until the end of the applicable time period. The notice will be published at least seven calendar days before the effective date of the closure.

Question 4: Does each new limit period begin at the start of the calendar year or at the start of the licensing year for U.S. purse seine vessels operating under the South Pacific Tuna Treaty, which is June 15?

Answer: Each limit period begins at the start of the calendar year and ends at the end of the calendar year. For example, the one-year limit period for 2009 begins at 00:00 on January 1, 2009, Universal Coordinated Time (UTC), and ends at 24:00 on December 31, 2009, UTC. The two-year limit period for 2009-2010 begins at 00:00 on January 1, 2009, UTC, and ends at 24:00 on December 31, 2010, UTC.

Question 5: What are the consequences of a limit being reached, and how long will they be in effect? In other words, exactly what will be prohibited?

Answer: When a limit is reached and the announcement is made of the fishery closure, fishing vessels of the United States equipped with purse seine gear may not be used to fish on the high seas and in areas under U.S. jurisdiction in the Convention Area between 20° N. latitude and 20° S. latitude. The Federal Register notice announcing the prohibition will specify the duration of the closure.

Category #2 FAD Prohibition Periods

From 00:00 on August 1 through 24:00 on September 30, UTC, in 2009, and from 00:00 on July 1 through 24:00 on September 30, UTC, in each of 2010 and 2011, U.S. purse seine vessel owners, operators, and crew are prohibited from doing the following in the entire Convention Area:

Setting a purse seine around a FAD or within one nautical mile of a FAD.

Setting a purse seine in a manner intended to capture fish that have aggregated in association with a FAD.

Deploying a FAD into the water.

Repairing, cleaning, maintaining, or otherwise servicing a FAD, including any electronic equipment used in association with a FAD, in the water, or on a vessel while at sea.

Key Questions and Answers:

Question 1: What exactly is a FAD?

Answer: For the purposes of these regulations, FAD means any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any objects used for that purpose that are situated on board a vessel or otherwise out of the water. The meaning of FAD does not include a fishing vessel, provided that the fishing vessel is not used for the purpose of aggregating fish.

Question 2: What is meant by “setting a purse seine in a manner intended to capture fish that have aggregated in association with a FAD”?

Answer: The purpose of this specific prohibition is to prohibit fishing on schools in association with FADs during the specified periods. Examples of prohibited activities include setting a purse seine in an area from which a FAD has been moved or removed within the previous eight hours, setting a purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD, and setting a purse seine in an area in which a FAD has been inspected or handled in the previous eight hours.

Question 3: If a FAD must be repaired or otherwise serviced during the prohibition periods to prevent safety hazards, what do I do?

Answer: During the prohibition periods, FADs may be inspected and handled as needed to identify the owner of the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety.

Question 4: Can we retrieve a FAD during the closure?

Answer: Yes. A FAD may be removed from the water and if removed may be cleaned, provided that it is not returned to the water.

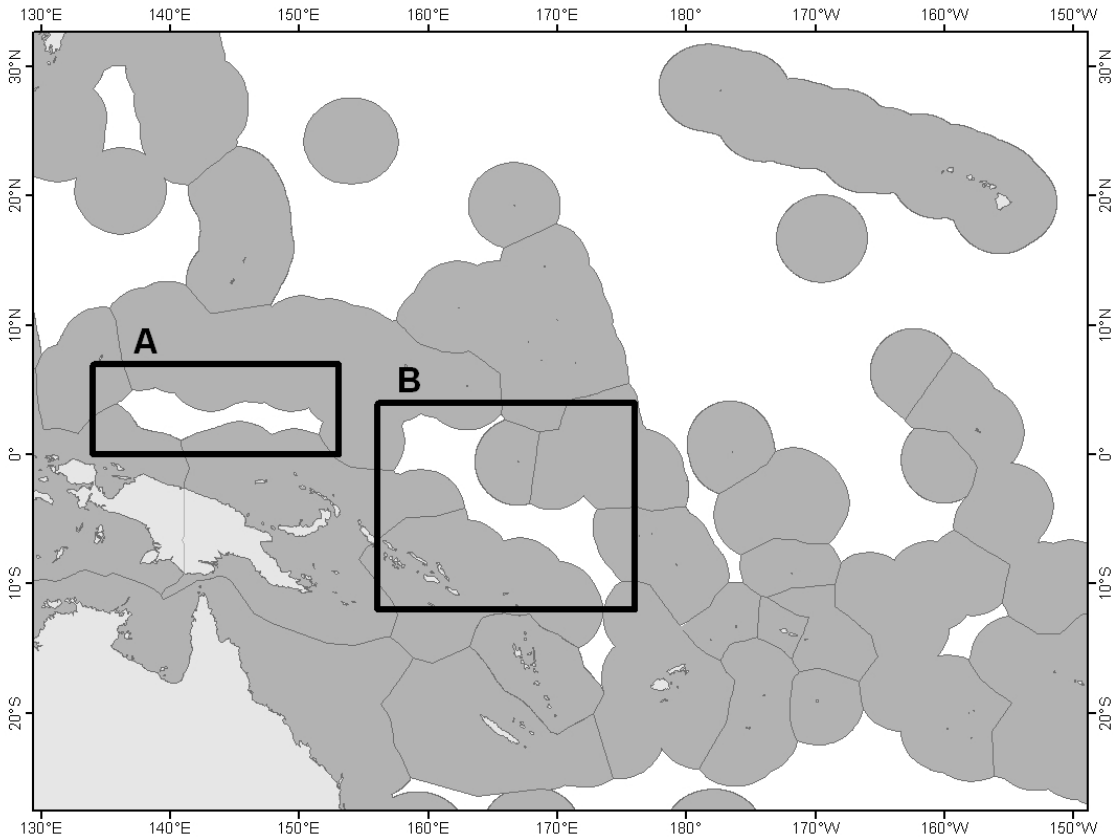
Category #3 High Seas Area Closures

A fishing vessel of the United States may not be used to fish with purse seine gear in the areas of high seas that lie within the two areas described below and depicted in Figure 2 below, from 00:00 on January 1, 2010, through 24:00 on December 31, 2011, UTC.

Area A: the rectangle bounded by the coordinates 7° N. latitude and 134° E. longitude; 7° N. latitude and 153° E. longitude; 0° latitude and 153° E. longitude; and 0° latitude and 134° E. longitude.

Area B: the rectangle bounded by the coordinates 4° N. latitude and 156° E. longitude; 4° N. latitude and 176° E. longitude; 12° S. latitude and 176° E. longitude; and 12° S. latitude and 156° E. longitude.

Figure 2. High seas closed areas. (Areas of high seas are indicated in white; areas of national jurisdiction, including territorial seas, archipelagic waters, and exclusive economic zones, are indicated in dark shading. Areas that are closed to purse seine fishing are all high seas areas (indicated in white) within the two rectangles bounded by the bold black lines. This map displays indicative maritime boundaries only.)



Category #4 Catch Retention

The operator and crew of a fishing vessel of the United States equipped with purse seine gear may not discard from the vessel any bigeye tuna, yellowfin tuna, or skipjack tuna (*Katsuwonus pelamis*) at sea in the Convention Area, except in the following circumstances and with the following conditions:

Fish that are unfit for human consumption, including but not limited to fish that are spoiled, pulverized, severed, or partially consumed at the time they are brought on board, may be discarded.

If at the end of a fishing trip there is insufficient well space to accommodate all the fish captured in a given purse seine set, fish captured in that set may be discarded, provided that no additional purse seine sets are made during the fishing trip.

If a serious malfunction of equipment occurs that necessitates that fish be discarded.

Key Questions and Answers:

Question 1: When is the catch retention requirement effective?

Answer: The catch retention requirement will be in effect no earlier than 00:00 on January 1, 2010, UTC, and will last through 24:00 on December 31, 2011, UTC. The requirement is contingent upon NMFS determining that an adequate number of WCPFC-authorized observers are available to monitor compliance with this measure by all WCPFC Members.

Question 2: How will I know when the requirement goes into effect?

Answer: NMFS will issue a notice in the Federal Register announcing the effective date, but vessel owners and operators should plan on an effective date of January 1, 2010, UTC. Also, if NMFS determines that there is no longer an adequate number of WCPFC observers available to ensure compliance with this requirement, NMFS may nullify this requirement through publication of a notice in the Federal Register.

Category #5 Observer Coverage

The following are the new observer coverage requirements for a fishing vessel of the United States that is equipped with purse seine gear operating in the Convention Area between 20° N. latitude and 20° S. latitude:

From 00:00 on August 1, 2009, through 24:00 on September 30, 2009, UTC, a U.S. fishing vessel that is equipped with purse seine gear may not be used to fish in the Convention Area without a WCPFC observer or an observer deployed by NMFS on board.

From 00:00 on January 1, 2010, through 24:00 on December 31, 2011, UTC, a U.S. fishing vessel may not be used to fish with purse seine gear in the Convention Area without a WCPFC observer on board.

Key Questions and Answers:

Question 1: Is this observer requirement in addition to the requirement under the South Pacific Tuna Treaty at 50 CFR § 300.43? How are the two requirements related? Might I have to carry two observers to comply with these two requirements?

Answer: No, under no instance will you be required to carry two observers. The current observers deployed by the Pacific Islands Forum Fisheries Agency (FFA) on U.S. purse seine vessels, pursuant to the terms of the South Pacific Tuna Treaty, are authorized under the WCPFC Regional Observer Programme (WCPFC ROP). Therefore, if there is an FFA-deployed observer on board your vessel you are in compliance with this new requirement.

Question 2: How do I arrange to carry an observer and what happens if an observer is not available when I want to go on a fishing trip?

Answer: Vessel owners and operators should use the existing protocol in place for the observer requirements under the South Pacific Tuna Treaty, meaning that NMFS (working with FFA) will schedule an observer placement. A vessel may go on a fishing trip without an observer only if it carries a written copy of the NMFS Pacific Islands Regional Administrator's determination indicating that an observer is not available for that fishing trip. The determination must include the approximate start date of the fishing trip and the port of departure and must be carried on board the fishing vessel during the entirety of the fishing trip. NMFS will provide this documentation to vessel owners and operators, as appropriate.

Question 3: Do I still need to have an observer on board if my fishing trip is limited to areas under U.S. jurisdiction (including the U.S. exclusive economic zone and territorial sea)?

Answer: No. If all portions of the fishing trip within the Convention Area take place entirely within areas under U.S. jurisdiction, no observer is required. Under this regulation, an observer also will not be required if all portions of the fishing trip within the Convention Area take place entirely within areas under jurisdiction of a single nation other than the United States, but may be required under the laws of other nations.

Question 4: What is the difference between a WCPFC observer and an observer deployed by NMFS and why is an observer deployed by NMFS allowed in 2009 but not in 2010 and 2011?

Answer: A “WCPFC observer” is an observer authorized by the WCPFC to undertake duties as part of the WCPFC ROP. An observer deployed as part of a national and sub-regional observer program is considered a WCPFC observer if the program from which the observer is deployed has been authorized, after undergoing an auditing process, to be part of the WCPFC ROP. The NMFS observer program has received such an authorization on an interim basis, so NMFS observers are, for now, WCPFC observers, and the distinction between the two is moot for the purpose of this requirement. However, if that authorization expires or is revoked, the distinction is important. In that case, carrying a NMFS observer during the relevant period in 2009 would satisfy this requirement, but doing so in 2010 or 2011 would not. This is because the WCPFC, in adopting the decision that led to this requirement, recognized that some time would be needed before the WCPFC ROP would have the capacity to serve the needs of all its members. Consequently, for the purpose of satisfying this requirement, the WCPFC allowed its members to utilize their own observers in 2009, but not thereafter.

Question 5: What are my responsibilities and obligations with respect to WCPFC observers?

Answer: Vessel operators and crew shall allow and assist WCPFC observers to do the following: embark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator; have access to and use of all facilities and equipment on board as necessary; remove samples; disembark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator; and carry out all duties safely. Operators shall provide WCPFC observers with food, accommodation, and medical facilities at no expense to the observer. Operators and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass or interfere with WCPFC observers in the performance of their duties, or attempt to do any of the same.

Category #6 Sea Turtle Interaction Mitigation

Owners and operators of U.S. fishing vessels equipped with purse seine gear that are used to fish in the Convention Area must carry on board and use specific gear and follow specific handling requirements in the course of interactions with sea turtles.

The required gear is a dip net with the following minimum design standards:

- An extended reach handle with a minimum length of 150 percent of the vessel's freeboard height. The extended reach handle must be made of wood or other rigid material able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending or distortion.
- The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings must be no more than 3 inches x 3 inches (7.62 x 7.62 cm) in size.

Although not required, a turtle hoist may be carried on board and used instead of a dip net to handle sea turtles. The minimum design standards for turtle hoists that are used instead of dip nets are:

- The turtle hoist must consist of one or more rigid frames to which a bag of mesh netting is securely attached. The frame or smallest of the frames must have a minimum opening (e.g., inside diameter, if circular in shape) of 31 inches (78.74 cm) and be capable of supporting a minimum of 100 lb (34.1 kg). The frame or frames may be hinged or otherwise designed so they can be folded for ease of storage, provided that they have no sharp edges and can be quickly reassembled. The bag mesh openings must be no more than 3 inches × 3 inches (7.62 cm × 7.62 cm) in size.
- Lines used to lower and raise the frame and net must be securely attached to the frame in multiple places such that the frame remains stable when lowered and raised.

The handling requirements are:

- If a sea turtle is observed enclosed in a purse seine but not entangled, it must be released immediately from the purse seine with the dip net or turtle hoist.
- If a sea turtle is observed entangled in a purse seine, the net roll must be stopped as soon as the sea turtle comes out of the water, and must not start again until the turtle has been disentangled and released.
- If a sea turtle is observed entangled in a FAD, it must be disentangled or the FAD must be cut immediately so as to remove the sea turtle.
- After disentanglement, if the sea turtle is not already on board the vessel and it is too large to be brought aboard or cannot be brought aboard without sustaining further injury, it must be left where it is in the water, or gently moved, using the dip net or turtle hoist if necessary, to an area away from the fishing gear and away from the propeller.
- After disentanglement, if the sea turtle is not too large to be brought aboard and can be brought aboard without sustaining further injury, the sea turtle must be brought aboard immediately using the dip net or turtle hoist.
- If a sea turtle brought aboard appears dead or comatose, the following actions must be taken:
 - The sea turtle must be placed on its belly (on the bottom shell or plastron) so that it is right side up and its hindquarters are elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation varies with the size of the sea turtle; greater elevations are needed for larger sea turtles.
 - A reflex test must be administered to the sea turtle at least once every 3 hours. The test is to be performed by gently touching the eye and pinching the tail of the sea turtle to determine if the sea turtle is responsive.
 - The sea turtle must be kept shaded and damp or moist (but under no circumstances placed into a container holding water). A water-soaked towel placed over the eyes (not covering the nostrils), carapace and flippers is the most effective method of keeping a sea turtle moist.

- If the sea turtle revives and becomes active, or if it fails to revive within the 24-hour period, it must also be returned to the sea in the manner described below, unless NMFS requests that the turtle or part thereof be kept on board and delivered to NMFS for research purposes.
- Any sea turtle that is brought aboard must be, after being handled as described above, returned to the ocean after species identification, unless NMFS requests the retention of the dead sea turtle for research. In releasing a sea turtle the vessel owner or operator must:
 - Place the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped;
 - Using the dip net or a turtle hoist to release the sea turtle with little impact, gently release the sea turtle away from any deployed gear; and
 - Observe that the turtle is safely away from the vessel before engaging the propeller and continuing operations.
- No sea turtle, including a dead turtle, may be consumed or sold. A sea turtle may be landed, offloaded, transshipped or kept below deck only if NMFS requests the retention of a dead sea turtle or a part thereof for research.