

(3) *California*. Seaward of California, California law provides that, in times and areas when the recreational fishery is open, there is a 20 fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person. [Note: There are some exceptions to this rule. The following groundfish species are not subject to a bag limit: Petrale sole, Pacific sanddab and starry flounder.] For groundfish species not specifically mentioned in this paragraph, fishers are subject to the overall 20-fish bag limit for all species of finfish and the depth restrictions at paragraph (c)(3)(i) of this section. Recreational spearfishing for all federally-managed groundfish, is exempt from closed areas and seasons, consistent with Title 14 of the California Code of Regulations. This exemption applies only to recreational vessels and divers provided no other fishing gear, except spearfishing gear, is on board the vessel. California state law may provide regulations similar to Federal regulations for the following state-managed species: Ocean whitefish, California sheephead, and all greenlings of the genus *Hexagrammos*. Kelp greenling is the only federally-managed greenling. Retention of cowcod, yelloweye rockfish, bronzespotted rockfish, and canary rockfish is prohibited in the recreational fishery seaward of California all year in all areas. Retention of species or species groups for which the season is closed is prohibited in the recreational fishery seaward of California all year in all areas, unless otherwise authorized in this section. For each person engaged in recreational fishing in the EEZ seaward of California, the following closed areas, seasons, bag limits, and size limits apply:

(i) \* \* \*

(A) *Recreational rockfish conservation areas*. The recreational RCAs are areas that are closed to recreational fishing for groundfish. Fishing for groundfish with recreational gear is prohibited within the recreational RCA, except that recreational fishing for “other flatfish” is permitted within the recreational RCA as specified in paragraph (c)(3)(iv) of this section. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA, unless otherwise authorized in this section. A vessel fishing in the recreational RCA may not be in possession of any species prohibited by the restrictions that apply within the recreational RCA. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession

of rockfish while in the RCA. The vessel may, however, on the same trip fish for and retain rockfish shoreward of the RCA on the return trip to port.] If the season is closed for a species or species group, fishing for that species or species group is prohibited both within the recreational RCA and shoreward of the recreational RCA, unless otherwise authorized in this section.

\* \* \* \* \*

(5) South of 34°27' N. lat. (Southern Management Area), recreational fishing for all groundfish (except California scorpionfish as specified below in this paragraph and in paragraph (c)(3)(v) of this section and “other flatfish” as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 60 fm (109.7 m) depth contour from March 1 through December 31 along the mainland coast and along islands and offshore seamounts, except in the CCAs where fishing is prohibited seaward of the 20 fm (37 m) depth contour when the fishing season is open (see paragraph (c)(3)(i)(B) of this section). Recreational fishing for all groundfish (except California scorpionfish and “other flatfish”) is closed entirely from January 1 through February 28 (*i.e.*, prohibited seaward of the shoreline). When the California scorpionfish fishing season is open, recreational fishing for California scorpionfish south of 34°27' N. lat. is prohibited seaward of a boundary line approximating the 60 fm (109.7 m) depth contour, except in the CCAs where fishing is prohibited seaward of the 20 fm (37 m) depth contour.

\* \* \* \* \*

(v) \* \* \*

(A) \* \* \*

(4) South of 34°27' N. lat. (Southern Management Area), recreational fishing for California scorpionfish is open from January 1 through August 31 (*i.e.*, it's closed from September 1 through December 31).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 150615523-5911-02]

RIN 0648-XD998

Pacific Island Pelagic Fisheries; 2015 U.S. Territorial Longline Bigeye Tuna Catch Limits for the Commonwealth of the Northern Mariana Islands

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

ACTION: Final specifications.

SUMMARY: In this final rule, NMFS specifies a 2015 limit of 2,000 metric tons (mt) of longline-caught bigeye tuna for the Commonwealth of the Northern Mariana Islands (CNMI). NMFS will allow the territory to allocate up to 1,000 mt each year to U.S. longline fishing vessels in a specified fishing agreement that meets established criteria. As an accountability measure, NMFS will monitor, attribute, and restrict (if necessary) catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement. These catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: The final specifications are effective October 9, 2015, through December 31, 2015. The deadline to submit a specified fishing agreement pursuant to 50 CFR 665.819(b)(3) for review is November 9, 2015.

ADDRESSES: Copies of the fishery ecosystem plans are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or [www.wpcouncil.org](http://www.wpcouncil.org).

Copies of the environmental assessment (EA) and finding of no significant impact for this action, identified by NOAA-NMFS-2015-0077, are available from [www.regulations.gov](http://www.regulations.gov), or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIRO Sustainable Fisheries, 808-725-5176.

SUPPLEMENTARY INFORMATION: NMFS is specifying a catch limit of 2,000 mt of longline-caught bigeye tuna for the CNMI in 2015. NMFS is also authorizing

the territory to allocate up to 1,000 mt of its 2,000 mt bigeye tuna limit to U.S. longline fishing vessels permitted to fish under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). The Western Pacific Fishery Management Council recommended these specifications.

NMFS will monitor catches of longline-caught bigeye tuna by the CNMI longline fisheries, including catches made by U.S. longline vessels operating under specified fishing agreements. A specified fishing agreement must meet specific criteria set forth in 50 CFR 665.819—Territorial catch and fishing effort limits, which also governs the procedures for attributing longline-caught bigeye tuna. When NMFS projects a territorial catch or allocation limit will be reached, NMFS will, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (if the territorial catch limit is projected to be reached), and/or vessels in a specified fishing agreement (if the allocation limit is projected to be reached). These catch and allocation limits and accountability measures are identical to those that NMFS specified in 2014 (79 FR 64097, October 28, 2014). NMFS notes that there is a pending case in litigation—*Conservation Council for Hawai'i, et al., v. NMFS* (D. Haw.), case no. 14-cv-528—that challenges the framework process allowing the U.S. Pacific Island territories to allocate a portion of their bigeye tuna catch limit to U.S. longline fishing vessels.

You may find additional background information on this action in the preamble to the proposed specifications published on August 24, 2015 (80 FR 51193).

### Comments and Responses

On August 24, 2015, NMFS published the proposed specifications and request for public comments (80 FR 51193); the comment period closed on September 8, 2015. NMFS received comments from individuals, businesses, and non-governmental organizations on the proposed specifications and the draft EA.

#### *Comments on the Proposed Specifications*

NMFS responds to comments on the proposed specifications, as follows:

*Comment 1:* Several commenters expressed concerns that the current closure of the western and central Pacific Ocean (WCPO) to longline-caught bigeye tuna is having a negative financial effect on fishing vessels and

other related businesses, and has created a very unstable environment for sustaining market confidence and job security of employees in the industry.

*Response:* On August 5, 2015, NMFS closed the U.S. pelagic longline fishery in the WCPO as a result of the fishery reaching the 2015 U.S. bigeye tuna catch limit of 3,502 mt (80 FR 44883). NMFS implemented the 2015 U.S. bigeye tuna catch limit to meet obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC Convention), including implementation of applicable decisions by the Western and Central Pacific Fisheries Commission (WCPFC). At its Eleventh Regular Session, in December 2014, the WCPFC adopted Conservation and Management Measure (CMM) 2014-01 “Conservation and Management Measure for Bigeye, Yellowfin, and Skipjack Tuna in the Western and Central Pacific Ocean.” CMM 2014-01 is the most recent in a series of CMMs for the management of tropical tuna stocks under the purview of the WCPFC. For bigeye tuna, the stated objective of CMM 2014-01 and its predecessor CMM (*i.e.*, CMM 2013-01) is to ensure reductions in the fishing mortality rate for bigeye tuna to a level no greater than the fishing mortality rate at maximum sustainable yield or FMSY, *i.e.*,  $F/FMSY \leq 1$ . CMM 2014-01 and other CMMs are available at: [www.wcpfc.int/conservation-and-management-measures](http://www.wcpfc.int/conservation-and-management-measures). Consistent with Amendment 7, NMFS will establish a limit of 2,000 mt of bigeye tuna for each U.S. Pacific territory for calendar year 2015, and allow each territory to allocate through specified fishing agreements up to 1,000 mt of its 2,000 mt bigeye tuna limit to U.S. fishing vessels permitted under the Pelagic FEP. This action would enable U.S. Pacific territories, which are not subject to catch limits under CMM 2014-01, to transfer a limited portion of quota in exchange for payments to support responsible fisheries development in the Territories, consistent with the conservation needs of the stock. We also anticipate that this action may provide limited stability to bigeye tuna markets in Hawaii and elsewhere, as well as some positive economic benefits for fishery participants, associated businesses, and net benefits to the Nation.

*Comment 2:* Several commenters expressed concern that, without this action, foreign imports will supply tuna and other pelagic species to the local market. These imports may be caught illegally and/or without proper regulatory oversight, and may end up

replacing future landings from U.S. vessels fishing out of Hawaii.

*Response:* NMFS acknowledges that during the WCPO closure to U.S. pelagic longline fisheries, more foreign-caught bigeye tuna would fill Hawaii market gaps. NMFS also agrees that increasing foreign imports of bigeye tuna into Hawaii has the potential to result in negative impacts on bigeye tuna stocks. Data presented in the EA show that bigeye tuna imports into Hawaii increased markedly in 2012, primarily from a 350 percent increase in imports from the Republic of the Marshall Islands, which has access agreements with foreign longline vessels consisting mostly of Chinese longline vessels. These access agreements allow Chinese longline vessels to catch bigeye tuna in the EEZ of the Republic of the Marshall Islands, which is within Region 4, an area of the WCPO that is experiencing some of the highest fishing impacts on bigeye tuna biomass (See Fig. 1 in the EA). Data in the EA, excerpted from the 2014 WCPO bigeye tuna stock assessment, also suggest that the bigeye tuna biomass would be substantially higher in Region 4 in the absence of fishing.

*Comment 3:* Several commenters expressed support for the action, noting that it would benefit the Hawaii longline fishing industry, local seafood-related businesses and restaurants, and their employees.

*Response:* NMFS acknowledges the comment. See also response to Comment 1.

*Comment 4:* One commenter noted that the proposed rule includes adoption of both an annual bigeye tuna longline catch limit of 2,000 mt per year for each of the U.S. Pacific territories, with an annual transferable limit of 1,000 mt for each territory. The commenter also noted that these limits are substantially more stringent than the conservation measures adopted by the WCPFC, which do not establish any bigeye limits for the U.S. Pacific territories.

*Response:* NMFS agrees that the 2015 bigeye tuna longline catch limit of 2,000 mt for each U.S. Pacific territory is more stringent than the big eye tuna conservation measures adopted by the WCPFC (*e.g.*, CMM 2014-01, CMM 2013-01, etc.). Paragraph 7 of CMM 2014-01 for example, exempts Small Island Developing States (SIDS) and Participating Territories (PT) to the WCPFC from annual catch limits. As PTs to the WCPFC, the U.S. Pacific territories of American Samoa, Guam and the CNMI, are not subject to individual bigeye tuna limits. However, consistent with the objectives of

Amendment 7, the 2,000 mt bigeye tuna limit applied to the U.S. Pacific territories, in conjunction with the 1,000 mt limit available for allocation, helps to ensure the sustainability of bigeye tuna stocks.

*Comment 5:* One commenter expressed support for the proposed rule, but questioned whether there is a factual basis to limit each territory to a 1,000 mt allocation. The commenter noted that even if there were a demonstrated need for such limits, it would be within the sovereign rights of each territory to evaluate and reserve appropriate bigeye tuna catch when negotiating the terms of specified fishing agreements.

*Response:* NMFS disagrees that the U.S. Pacific territories have independent authority under the Magnuson-Stevens Act or WCPFC Convention to evaluate and allocate catch of bigeye tuna. Under the Magnuson-Stevens Act, the United States exercises exclusive management authority over fishery resources in the EEZ. This action authorizes U.S. Pacific territories to enter into specified agreements to allocate a limited amount of bigeye tuna to eligible U.S. fishing vessels permitted under the Pelagic FEP, consistent with the conservation needs of the stock. Under Federal regulations implementing the Pelagic FEP, NMFS has established overall catch limits and limits available for allocation; however, within the available allocation limits, the territories exercise a limited interest to negotiate the terms of specified fishing agreements, including the amount of catch up to and including the allocation limit.

As documented in the EA, NMFS is satisfied that this action helps achieve conservation and management objectives to eliminate overfishing on bigeye tuna, consistent with regional international objectives. Limiting overall harvest of bigeye tuna is important to eliminate overfishing and sustainably manage the stock in the WCPO. Further, NMFS does not expect the limited amount available for allocation to eligible permit holders through specified fishing agreements to support fisheries development in the territories to impede those objectives to end overfishing.

*Comment 6:* One commenter said that in the circumstance where a specified fishing agreement with CNMI or Guam is in effect, the catch of a dual-permitted longline vessel (*i.e.*, a vessel registered under a valid American Samoa Longline Limited Access Permit in addition to a valid Hawaii Longline Limited Access Permit) listed in the agreement that occurs outside the U.S. EEZ is attributed to American Samoa unless and until the

American Samoa quota is exhausted, at which time such catch would be attributed to the territory (*e.g.*, CNMI or Guam) identified in the agreement. Conversely, the commenter also said that in this same circumstance, NMFS would attribute the catch of a dual-permitted vessel that occurs inside the U.S. EEZ to the territory (*e.g.*, CNMI or Guam) identified in the agreement.

*Response:* NMFS disagrees with that interpretation. Federal regulations at 50 CFR 300.224(c) set forth the attribution procedures for bigeye tuna caught by vessels with an American Samoa Longline Limited Access Permit. Pursuant to 50 CFR 300.224(c), attribution of high seas catch by a “dual permitted” vessel is always to the American Samoa permit unless there is a specified fishing agreement. In that case, attribution of catch (whether on the high seas or in US EEZ surrounding Hawaii) is to the applicable U.S. Pacific territory “according to the terms of the agreement to the extent the agreement is consistent with this section [300.224] and applicable law [665.819(c) of this title].” The terms of the specified fishing agreement cannot alter the attribution priority scheme. Furthermore, Federal regulations at 50 CFR 665.819(c) clarify that NMFS will attribute catch made by vessels identified in a specified fishing agreement to the applicable U.S. territory to which the agreement applies. Therefore, NMFS attributes bigeye tuna caught by any vessel identified in a specified fishing agreement to the U.S. territory to which the agreement applies, even if the vessel has a dual permit.

*Comment 7:* One commenter said that the proposed specifications would further undermine international efforts to eliminate overfishing of bigeye tuna and is at odds with the United States agreement to reduce its bigeye tuna catch.

*Response:* NMFS disagrees that this action undermines the WCPFC overfishing objectives of its bigeye tuna CMMs. As stated above, the objective of CMM 2014–01 is to ensure reduction of fishing mortality rate for bigeye tuna to a level no greater than FMSY, *i.e.*,  $F/FMSY \leq 1$ . The analysis in the EA demonstrates that the 1,000 mt allocation limit authorized for each U.S. Pacific territory will achieve the conservation and management objectives to eliminate overfishing on bigeye tuna, consistent with regional international objectives, without prejudicing the rights and obligations of SIDs and PTs as set forth in the CMMs. The action is further consistent with Article 30 of the Convention, which provides that the WCPFC shall give full

recognition to the special requirements of developing States to this Convention, in particular SIDS, and of territories and possessions, in relation to conservation and management of highly migratory fish stocks. This action provides a mechanism for U.S. territories to develop their pelagic fisheries, without compromising conservation objectives.

*Comment 8:* One commenter urged NMFS to follow the WCPFC Scientific Committee’s recommendation that, in order to reduce fishing mortality to FMSY levels, a 36 percent reduction in fishing mortality is required from 2008–2011 levels.

*Response:* NMFS disagrees. The WCPFC Scientific Committee provides recommendations and information to help ensure that the WCPFC considers the best scientific information available. The U.S. has no obligation to directly implement Scientific Committee recommendations. Doing so could place U.S. fishermen at an unfair disadvantage relative to other nations’ fisheries. The WCPFC properly takes into account Scientific Committee recommendations in making its conservation and management decisions.

*Comment 9:* The proposed specifications would authorize Hawaii-based longliners to catch far more bigeye than ever before.

*Response:* Under the action, Hawaii-based longline vessels could potentially enter into specified fishing agreements with each of the three U.S. Pacific territories and harvest each territory’s allocation limit of 1,000 mt of bigeye tuna, for a total of 3,000 mt. This would be in addition to the 2015 U.S. bigeye tuna limit of 3,502 mt. NMFS evaluated the potential impact of this action on WCPO bigeye tuna and is satisfied that this action helps achieve conservation and management objectives to eliminate overfishing on bigeye tuna, consistent with regional international objectives. (See also response to Comment 5.)

*Comment 10:* One commenter noted that in CMMs 2013–01 and 2014–01, the WCPFC established a goal of ending overfishing of bigeye tuna in the WCPO by 2017.

*Response:* NMFS agrees that the objective of CMM 2013–01, as carried forward in CMM 2014–01, is to end overfishing of bigeye tuna. However, NMFS disagrees with the interpretation that we must reach the objective by 2017. The language of CMM 2013–01, as carried forward in 2014–01, reads “The fishing mortality rate for bigeye tuna will be reduced to a level no greater than FMSY, *i.e.*,  $F/FMSY \leq 1$ . This objective shall be achieved through step by step approach through 2017 in accordance with this Measure.”

As explained in the EA, no model indicates that overfishing of bigeye tuna will end by 2017 under CMM 2014–01, with or without the proposed action. Accordingly, the second sentence more appropriately applies to the timeframe for implementing the annual step-by-step reductions in purse seine effort and longline catches, as set forth in CMM 2013–01, and as carried forward in CMM 2014–01. In fact, at the Eleventh Regular Session of the WCPFC in December 2014, the Secretariat of the Pacific Community, the scientific services provider of the WCPFC, presented a report indicating that if fully implemented, the step-by-step measures contained in CMM 2013–01 and carried forward in CMM 2014–01 for 2015, 2016, and 2017, would end overfishing of bigeye tuna by 2032. This report provides the baseline against which NMFS evaluates the impacts of the proposed action.

*Comment 11:* One commenter noted that on September 25, 2015, the U.S. District Court in Hawaii will hold a hearing on a motion for summary judgment relating to the Pelagic FEP Amendment 7 framework to allocate bigeye tuna catch and effort limits to the U.S. Pacific territories. The commenter argued that the proposed allocation scheme is “illegal” under the Western and Central Pacific Fisheries Implementation Act (WCPFC Implementation Act), as argued in the case *Conservation Council for Hawai‘i v. NMFS*, Civ. No. 14–00523 (D. Haw.), and attached various court documents supporting the plaintiffs’ claims. The commenter urged NMFS to await the court’s ruling before making a final decision regarding the proposed 2015 bigeye tuna specifications.

*Response:* Section 304(b) of the Magnuson-Stevens Act requires the Secretary to promulgate final regulations within 30 days of the end of the comment period for a proposed rule. The comment period for this action closed on September 8, 2015. Therefore, NMFS must promulgate final regulations in the **Federal Register** on or before October 8, 2015. There is, moreover, no certainty that the Court would render a decision on the motion before October 8, 2015. Finally, NMFS is implementing the proposed specification consistent with the Magnuson-Stevens Act, Amendment 7, and applicable WCPFC decisions. NMFS has no basis with which to lawfully delay action on the final rule.

NMFS also disagrees with the comment that the catch and allocation framework established by Amendment 7 and promulgated at 50 CFR 665.819 is “illegal” under the WCPFC

Implementation Act. First, NMFS implemented Amendment 7 and the accompanying regulations under the Magnuson-Stevens Act, not the WCPFC Implementation Act (as asserted in the aforementioned litigation). Second, in approving Amendment 7 and framework regulations in 2014, NMFS reviewed both the amendment and regulations for consistency with the Magnuson-Stevens Act and its National Standards; the WCPFC Implementation Act; Section 113 of Public Law 112–55; 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013); and applicable WCPFC CMMs. Finally, the Council and NMFS developed Amendment 7 and implementing regulations in response to a congressional directive.

#### *Comments on the Draft Environmental Assessment*

NMFS responds to comments on the draft EA, as follows:

*Comment 12:* One commenter agreed with the NMFS approach of addressing a two-year period in the draft EA. This will eliminate the need for a duplicative National Environmental Policy Act (NEPA) review for the 2016 specification process.

*Response:* NMFS acknowledges the comment.

*Comment 13:* One commenter agreed that WCPFC CMMs are relevant to the NMFS determination that the Federal government is acting consistent with its international obligations. However, it is important to recognize that those international obligations are not binding domestic law unless and until the Federal government expressly incorporates them through the promulgation of Federal regulations pursuant to the WCPFC Implementation Act.

*Response:* NMFS generally agrees that international obligations reflected in WCPFC decisions are not enforceable until the government gives them effect by regulations implemented under the WCPFC Implementation Act.

*Comment 14:* One commenter suggested correcting Table 1 to reflect that the fisheries would reach the territory limits and allocations under the assumptions stated for Outcome D. The commenter also noted, however, that it is not necessary or possible to currently predict when the fisheries would reach those limits and allocations in the Outcome D scenario.

*Response:* Outcome D assumes that all three U.S. Pacific territories would each

catch 1,000 mt of bigeye tuna (total catch of 3,000 mt) in 2015 and 2016, and that U.S. pelagic fisheries would harvest each of the territory’s allocation limit of 1,000 mt of bigeye tuna under three specified fishing agreements (3,000 mt). However, NMFS does not expect all three U.S. Pacific territories will each catch 1,000 mt of bigeye tuna. This is because Guam and CNMI currently do not have an active longline fishery and vessels operating in the longline fisheries of American Samoa harvest an annual average of 521 mt of bigeye tuna. Therefore, it is unlikely longline fisheries of these territories will each catch 1,000 mt of bigeye tuna in 2015 or 2016. However, because Outcome D represents the full potential impact of the Council’s recommendation, and given that the development of U.S. territorial fisheries is an objective of this action, the scenario in Outcome D is a reasonable alternative to consider.

*Comment 15:* One commenter noted the deep-set fishery does not interact at all, nor does it have the potential to interact, with some of the species listed on the protected species interaction table, such as the blue whale, the Hawaiian monk seal, and all of the coral species. The commenter suggested that it is, therefore, incorrect to state that the fishery has a “potential to interact” with these species.

*Response:* Table 14 of the EA identifies all species listed as threatened or endangered under the Endangered Species Act (ESA) known to occur or are reasonably expected to occur in areas where U.S. longline fishing vessels operate. While NMFS agrees that the Hawaii deep-set longline fishery has not interacted with some of the species listed in the table, all longline vessels have the potential to interact with these species through incidental hooking or entanglement with fishing gear, collisions, exposure to vessel wastes and discharges, or direct and indirect competition for forage. Pursuant to ESA Section 7, NMFS has evaluated the pelagic longline fisheries of Hawaii, American Samoa, Guam, and the CNMI for potential impacts on ESA-listed marine species under NMFS jurisdiction and their habitat. EA section 5.5 summarizes the conclusions of these consultations. Additionally, EA section 4.3 presents the effects of the action described in this final rule on ESA-listed species.

*Comment 16:* One commenter said that the EA should note that the Hawaii humpback whale population has been proposed for delisting.

*Response:* On April 21, 2015, NMFS published a proposed rule in the

**Federal Register** announcing the Agency's intention to divide the globally-listed endangered humpback whale species into 14 distinct population segments (DPS), remove the current species listing, and, in its place, propose for listing four DPSs. The ten DPSs not proposed for listing include the Hawaii DPS and the Oceania DPS, which occur in areas where the Hawaii and American Samoa longline fisheries operate, respectively (80 FR 22304). Please consult the proposed rule for specific information on the humpback whale DPS proposal. NMFS added a summary of the proposed rule in the EA accompanying the big eye tuna specification (see section 3.3.2—Marine Mammals).

*Comment 17:* One commenter noted that in numerous areas, the Draft EA addresses the transferred effects caused by closing Hawaii longline fisheries (*i.e.*, the resulting increase in imports from less regulated foreign fisheries) and the detrimental impacts this can have on local Hawaii seafood markets and on U.S. fisheries. The commenter supports these statements, and notes that several published scientific studies corroborate them. In this light, the commenter requested that NMFS include the papers enclosed with their comment letter in the administrative record.

*Response:* NMFS acknowledges and posted for public viewing at [www.regulations.gov](http://www.regulations.gov) the papers included in the submission of this comment.

*Comment 18:* One commenter identified an incorrect reference to the "proposed action" in the "CNMI and Guam longline fisheries" subsection. The commenter noted that this section appears to address the "no action" alternative, not the proposed action.

*Response:* NMFS agrees and has corrected the text in EA section 4.1.1.2 "Potential Impacts to Other Non-Target Stocks."

*Comment 19:* One commenter suggested that, although Outcome D is theoretically possible, as NMFS and the Council recognize, it is very unlikely to occur (and, in fact, will not occur). Outcome D is therefore not a "reasonable" potential outcome and there is no reason to evaluate it as a sub-alternative to the proposed action alternative. See 40 CFR 1502.14 (only "reasonable" alternatives evaluated in NEPA document).

*Response:* NMFS disagrees with the assertion that Outcome D is not a reasonable sub-alternative to consider. The final rule implements the Council's recommendation to establish 2,000 mt longline limits for CNMI, of which

CNMI may allocate 1,000 mt under a specified fishing agreement. We believe that both the Magnuson-Stevens Act and NEPA require NMFS to analyze the full impact of the action that it authorizes.

NMFS agrees that because Guam and the CNMI do not currently have an active longline fishery, Outcome D is not likely to occur in the next 2 years because Outcome D anticipates that the longline fisheries of all three U.S. territories would each harvest 1,000 mt of bigeye tuna in 2015 and 2016. However, NMFS also notes that this action, by providing for payments for fisheries development in the U.S. Pacific territories, has the potential to develop longline fishery capacity in the territories. Therefore, NMFS believes that Outcome D is a reasonable alternative to consider in the environmental impact analysis in the EA. (See also response to Comment 14.)

*Comment 20:* One commenter suggested that NMFS add a discussion in the EA about why the proposed rule will have no material impacts on yellowfin tuna.

*Response:* NMFS agrees and has revised EA section 4.1.2.2 "Potential Impacts to Other Non-Target Stocks" to include an analysis of the potential impacts of the action on WCPO yellowfin tuna.

*Comment 21:* One commenter noted that Appendix E states that "one [specified fishing] agreement would only provide support for projects in one territory." However, as noted earlier in the Draft EA, specified fishing agreements may benefit all U.S. participating territories, not just the territory to which the agreement applies.

*Response:* NMFS has revised Appendix E of the EA by removing the statement that one specified fishing agreement would only provide support for projects in one U.S. Pacific territory.

#### **Changes From the Proposed Specifications**

In the proposed specifications published on August 24, 2015 (80 FR 51193), NMFS proposed to specify a catch limit of 2,000 mt of longline-caught bigeye tuna for each of the three U.S. Pacific territories (Guam, the CNMI, and American Samoa). NMFS also proposed to authorize each territory to allocate up to 1,000 mt of its 2,000 mt bigeye tuna limit to U.S. longline fishing vessels permitted to fish under the FEP.

NMFS determined that the proposed catch and allocation limits were consistent to the maximum extent practicable with the enforceable policies of the approved coastal zone

management programs of each of the three territories. The coastal management program of the CNMI concurred with this determination. The American Samoa coastal management program, however, has requested an extension of time to review the proposed action. Under regulations at 15 CFR 930.41(b), NMFS is approving the requested extension. The Guam coastal management program has also indicated that it is still reviewing the proposed specifications.

So that we may implement the territorial limits in a timely fashion, NMFS is currently implementing the 2015 limits only for the CNMI. We will consider the American Samoa and Guam reviews of the CZMA federal consistency determination before implementing a 2015 limit for American Samoa and Guam.

#### **Classification**

The Regional Administrator, NMFS PIR, determined that this action is necessary for the conservation and management of Pacific Island fishery resources, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed rule and does not repeat it here. NMFS received no comments on this certification. As a result, a regulatory flexibility analysis is not required, and none has been prepared.

There is good cause to waive the 30-day delay requirement of the Administrative Procedure Act, 5 U.S.C. 553(d)(1), and make this rule effective immediately upon service. NMFS closed the U.S. pelagic longline fishery for bigeye tuna in the WCPO on August 5, 2015, because the fishery reached the 2015 U.S. WCPO catch limit (80 FR 44883, July 28, 2015). A delayed effective date would be impracticable because the fishing year ends on December 31, 2015, and vessels identified in a valid specified fishing agreement would be prevented from fishing for one month of the remaining three months of this fishing year. Furthermore, during the comment period for the proposed rule, NMFS received comments that the WCPO closure is having a negative financial effect on the fishing community, including vessels, restaurants, and other

seafood-related businesses, and that this action would relieve this financial pressure by allowing U.S. fishing vessels identified in a valid specified fishing agreement to supply the domestic big eye tuna market. Finally, these specifications are identical to those that NMFS specified in 2014 (79

FR 64097, October 28, 2014), do not impose any new requirements on any entity, and would not result in significant impacts to the human environment.

This action is exempt from review under E.O. 12866 because it contains no implementing regulations.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 7, 2015.

**Samuel D. Rauch III,**  
*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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