

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 300**

[Docket No. 210929–0202]

RIN 0648–BI79

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fish Aggregating Device Design Requirements in Purse Seine Fisheries, IMO Number Requirements, and Bycatch Restrictions

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS seeks comments on this proposed rule issued under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act). The proposed rule would implement recent decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission) on fish aggregating device (FAD) design requirements, International Maritime Organization (IMO) number requirements, and bycatch restrictions for sharks and rays. This action is necessary to satisfy the 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 (Convention), to which it is a Contracting Party. The proposed rule would apply to owners and operators of U.S. fishing vessels used for commercial fishing for highly migratory species (HMS) in the area of application of the Convention.

DATES: Comments on the proposed rule must be submitted in writing by November 8, 2021.

ADDRESSES: You may submit comments on the proposed rule and the regulatory impact review (RIR) prepared for the proposed rule, identified by NOAA–NMFS–2021–0068, by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2021–0068 in the Search box. Click on the “Comment” icon,

complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

- *Fax:* (808) 725–5215; Attn: Michael D. Tosatto.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

An initial regulatory flexibility analysis (IRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the RIR and the Environmental Assessment are available at www.regulations.gov or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES** above).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to PIRO at the address listed above and to www.reginfo.gov/public/do/PRAMain.

FOR FURTHER INFORMATION CONTACT: Emily Crigler, NMFS PIRO, 808–725–5036.

SUPPLEMENTARY INFORMATION:**Background**

The Convention focused on the conservation and management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the Western and Central Pacific Ocean (WCPO). To accomplish this objective, the Convention established the Commission, which includes Members, Cooperating Non-members, and Participating Territories (collectively referred to here as “members”). The United States is a Member. American Samoa, Guam, and the Commonwealth of the Northern

Mariana Islands (CNMI) are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States implements, as appropriate, conservation and management measures and other decisions adopted by the Commission. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC website at: www.wcpfc.int/doc/convention-area-map.

The United States is also a member of the Inter-American Tropical Tuna Commission (IATTC). The convention areas for the IATTC and WCPFC overlap in the Pacific Ocean waters within a rectangular area bounded by 50° S latitude, 4° S latitude, 150° W longitude, and 130° W longitude (“overlap area”).

Historically, regulations implementing the conservation measures adopted by the IATTC (50 CFR part 300, subpart C) and the WCPFC (50 CFR part 300, subpart O) both applied to U.S. vessels fishing for HMS in the overlap area. In 2012, the IATTC and the WCPFC adopted recommendations/decisions under which members with vessels listed in both WCPFC Record of Fishing Vessels (Record) and IATTC Regional Vessel Register List (Register) would decide which of the two commissions’ decisions those vessels would operate under when fishing in the overlap area.¹

¹ See IATTC Recommendation C–12–11, “IATTC–WCPFC Overlap Area,” and WCPFC decision documented in “Summary Report of the Ninth

In 2020, NMFS published a rule (85 FR 37376; June 22, 2020) adjusting NMFS regulations implementing IATTC resolutions that apply in the overlap area, and adjusting NMFS regulations implementing WCPFC conservation and management measures that place limits or restrictions on catch, fishing effort, and bycatch mitigation to no longer apply in the overlap area (2020 overlap rule). In this proposed rule, NMFS proposes to follow the basis established in the 2020 overlap rule, so that the WCPFC management measures which would implement limits or restrictions on catch, fishing effort, and bycatch mitigation would not apply in the overlap area.

Measures To Be Implemented

This proposed rule includes implementation of specific provisions of four recent WCPFC decisions (CMM 2018–01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna”; CMM 2018–06, “Conservation and Management Measure for WCPFC Record of Fishing Vessels and Authorisation to Fish”; CMM 2019–04, “Conservation and Management Measure for Sharks”; and CMM 2019–05, “Conservation and Management Measure on Mobulid Rays”).

The first decision, Conservation and Management Measure (CMM) 2018–01, “Conservation and Management Measure for Bigeye, Yellowfin, and Skipjack Tuna in the Western and Central Pacific Ocean,” was adopted by the Commission at its fifteenth regular annual session, in December 2018. The measures in CMM 2018–01 continue to be in force until February 15, 2022, per CMM 2020–01. The purpose of CMM 2018–01, and its predecessor measures, is to ensure the sustainability of the stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) in the WCPO until the establishment of specific harvest strategies for those stocks. CMM 2018–01 is similar in many respects to its predecessor WCPFC conservation and management measures for tropical tunas, and NMFS has already implemented most provisions of CMM 2018–01 through prior rulemakings (see regulations at 50 CFR 300.223 and 50 CFR 300.224).

The proposed rule would implement the provisions of CMM 2018–01 regarding non-entangling FADs for purse seine fishing vessels. Paragraph

19 of CMM 2018–01 includes the following FAD specifications, in order to reduce the risk of entanglement of sharks, sea turtles or any other species, to be implemented by January 1, 2020:

- The floating or raft part (flat or rolled structure) of the FAD can be covered or not. To the extent possible the use of mesh net should be avoided. If the FAD is covered with mesh net, it must have a stretched mesh size less than 7 centimeters (cm) (2.5 inches) and the mesh net must be well wrapped around the whole raft so that there is no netting hanging below the FAD when it is deployed.

- The design of the underwater or hanging part (tail) of the FAD should avoid the use of mesh net. If mesh net is used, it must have a stretched mesh size of less than 7 cm (2.5 inches) or tied tightly in bundles or “sausages” with enough weight at the end to keep the netting taut down in the water column. Alternatively, a single weighted panel (less than 7 cm (2.5 inches) stretched mesh size net or solid sheet such as canvas or nylon) can be used.

The second decision, CMM 2018–06, “Conservation and Management Measure for WCPFC Record of Fishing Vessels and Authorisation to Fish,” includes an amendment that expands the requirement to obtain an IMO number to smaller vessels used for commercial fishing for HMS in the Convention Area. The CMM states that effective April 1, 2020, members “shall ensure that all their motorized inboard fishing vessels of less than 100 [gross registered tonnage] GRT (or 100 GRT) down to a size of 12 meters in length overall (LOA), authorized to be used for fishing in the Convention Area beyond the flag [members] area of national jurisdiction have an IMO or LR issued²”. The existing requirement to obtain an IMO number, implemented by NMFS, applies to vessels that are at least 100 GRT (see 50 CFR 300.217(c)). This proposed rule would expand the requirement to vessels less than 100 GRT down to a size of 12 meters LOA.

The third decision, CMM 2019–04, “Conservation and Management Measure for Sharks,” combines and replaces five management measures related to sharks that had previously been adopted by the Commission (CMM 2010–07, “Conservation and Management Measure for Sharks”; CMM

2011–04, “Conservation and Management Measure for Oceanic Whitetip Sharks”; CMM 2012–04, “Conservation and Management Measure on the Protection of Whale Sharks from Purse Seine Operations”; CMM 2013–08, “Conservation and Management Measure for Silky Sharks”; and CMM 2014–05, “Conservation and Management Measure for Sharks”). The measure and all of its provisions became effective November 1, 2020. Most of the provisions of CMM 2019–04 have already been promulgated through existing U.S. regulations (50 CFR 300.226; 50 CFR 300.223(g) and (h)), which implemented prior WCPFC decisions. However, there are two new provisions in the measure. The regulations at 50 CFR 300.226 prohibit the retention, transshipment, storage, or landing of the oceanic whitetip shark (*Carcharhinus longimanus*) and the silky shark (*Carcharhinus falciformis*), and require the release of oceanic whitetip shark and silky shark as soon as possible after the shark is caught and brought alongside the vessel. CMM 2019–04 includes an amendment that would allow for an exemption for purse seine vessels in cases where an oceanic whitetip shark or silky shark are not seen during fishing operations and are delivered into the vessel hold. Paragraph 20(3) of CMM 2019–04 states that, “in the case of oceanic whitetip shark and silky shark that are unintentionally caught and frozen as part of a purse seine vessels’ operation, the vessel must surrender the whole oceanic whitetip shark and silky shark to the responsible governmental authorities or discard them at the point of landing or transshipment.” Paragraph 20(3) also specifies that “[o]ceanic whitetip shark and silky shark surrendered in this manner may not be sold or bartered but may be donated for purpose of domestic human consumption.” CMM 2019–04 also includes an amendment that requires that sharks be hauled alongside the vessel before being cut free in order to facilitate species identification. However, the provision only applies when an observer or electronic monitoring camera is present. This proposed rule would implement the above listed provisions of CMM 2019–04.

CMM 2019–04 also includes a provision requiring that vessels are made aware of proper handling and release techniques for sharks. The WCPFC has adopted recommended guidelines for the safe release of sharks; however, the WCPFC guidelines are non-binding. Because use of the best

Regular Session of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean,” Manila, Philippines, 2–6 December, 2012, paragraph 80.

² An IMO number is the unique number issued for a vessel under the ship identification number scheme established by the International Maritime Organization or, for vessels that are not strictly subject to that scheme, the unique number issued by the administrator of that scheme using the scheme’s numbering format, sometimes known as a Lloyd’s Register number or LR number.

handling practices is not a binding obligation, NMFS does not intend to require their use in this proposed rule. The WCPFC guidelines are available to vessel owners and operators at <https://www.wcpfc.int/doc/supplcmm-2010-07/best-handling-practices-safe-release-sharks-other-whale-sharks-and>.

The fourth decision, CMM 2019–05, “Conservation and Management Measure on Mobulid Rays Caught in Association with Fisheries in the WCPFC Convention Area,” was adopted by the Commission at its sixteenth regular annual session in December 2019. The main objective of CMM 2019–05 is to ensure the conservation of mobulid rays (*i.e.*, the family Mobulidae, which includes manta rays and devil rays (*Mobula* spp.)) by reducing incidental take and mortalities in the Convention Area. The measure, which became effective on January 1, 2021, requires that members: (1) Prohibit targeted fishing or intentional setting on mobulid rays in the Convention Area; (2) prohibit vessels from retaining on board, transshipping, or landing any part or whole carcass of mobulid rays caught in the Convention Area; (3) require vessels to promptly release mobulid rays, alive and unharmed, to the extent practical, as soon as possible and in a manner that will result in the least possible harm to the individuals captured; (4) provide for an exemption in cases where a mobulid ray is unintentionally caught and frozen as part of a purse seine vessel’s operation; and (5) require that vessels allow for observers to collect biological samples of mobulid rays that are dead at haul-back. This proposed rule would implement the above listed provisions of CMM 2019–05.

CMM 2019–05 also includes a provision requiring that vessel owners and operators are made aware of proper handling and release guidelines for mobulid rays. The measure includes best handling practices for the safe release of mobulid rays, and states that members should encourage their vessels to use them. However, because use of the best handling practices is not a binding obligation, NMFS does not intend to require their use in this proposed rule. The WCPFC guidelines are available to vessel owners and operators <https://www.wcpfc.int/doc/supplcmm-2010-07/best-handling-practices-safe-release-mantas-and-mobulids>.

Proposed Action

Under the proposed rule, the restrictions and requirements described in the Commission decisions above would apply to U.S. vessels used for

commercial fishing for HMS on the high seas and in exclusive economic zones (EEZs) in the Convention Area. NMFS is proposing to follow the basis established in the 2020 overlap rule, as noted above, so that the WCPFC management measures which would place limits or restrictions on catch, fishing effort, and bycatch mitigation would not apply in the overlap area. Following the approach used in the 2020 overlap rule, NMFS is proposing that the non-entangling FAD requirements, revised shark requirements, and fishing restrictions for mobulid rays would not apply in the overlap area, and the IMO number requirement would apply in the overlap area.

As described above, the elements of the proposed rule fall into the following four categories: (1) Non-entangling FAD requirements; (2) IMO number requirement; (3) revised purse seine restrictions for the oceanic whitetip shark and the silky shark and additional shark release requirements for all vessels; (4) and fishing restrictions for mobulid rays. Each of these elements of the proposed rule is described in more detail below.

Non-Entangling FAD Requirements

The proposed rule would implement the FAD design requirements set forth in paragraph 19 of CMM 2018–01. These provisions would be implemented in a manner that is consistent with NMFS’s implementation of the FAD design requirements in Resolution C–18–05 of the IATTC, which manages tuna purse seine fisheries in the eastern Pacific Ocean (EPO). U.S. purse seine vessels sometimes fish in the WCPO and EPO on the same fishing trip and FADs are known to drift from the EPO into the WCPO, so ensuring consistent FAD design requirements would enable NMFS to better implement and enforce both the WCPFC and IATTC decisions on FAD designs.

Under the proposed rule, if the FAD design includes a raft (*e.g.*, flat raft or rolls of material) and if mesh netting is used as part of the structure, the mesh netting shall have a stretched mesh size less than 7 cm and the mesh net must be tightly wrapped such that no netting hangs below the FAD when deployed. Additionally, any netting used in the subsurface structure of the FAD must be tightly tied into bundles (“sausages”) or have a stretched mesh size less than 7 cm in a panel that is weighted on the lower end with at least enough weight to keep the netting taut in the water column. These requirements are the same as those specified at 50 CFR 300.28(e), which implement IATTC’s

FAD design requirements for the EPO specified in Resolution C–18–05.

This element of the proposed rule would apply to all purse seine vessels used for commercial fishing for HMS on the high seas and in exclusive economic zones in the Convention Area (excluding the overlap area).

IMO Number Requirement

Existing regulations at 50 CFR 300.217(c) apply to all U.S. fishing vessels (including those participating in the fisheries of the U.S. Participating Territories) that are used for commercial fishing for highly migratory fish stocks in the Convention Area either on the high seas or in waters under the jurisdiction of a foreign nation, and the gross tonnage of which is at least 100 GRT or 100 GT (gross tons). The owner of any such fishing vessel is required to ensure that an “IMO number” has been issued for the vessel. An “IMO number,” as stated above, is the number—sometimes called an IMO ship identification number—issued for a ship or vessel under the ship identification number scheme established by the IMO. Currently, IMO numbers are issued on behalf of the IMO by Information Handling Services (IHS) Markit, the current administrator of the IMO ship identification number scheme. A vessel owner may request that an IMO number be issued by following the instructions given by IHS Markit, available at: www.imonumbers.lrfairplay.com. There is no fee for making such a request or having an IMO number issued, but specific information about the fishing vessel and its ownership and management must be provided to the administrator of the scheme. The existing regulations include a process for fishing vessel owners to request an exemption from NMFS if they are unable to obtain IMO numbers. When NMFS receives such a request it will review it and assist the fishing vessel owner as appropriate. If NMFS determines that it is infeasible or impractical for the fishing vessel owner to comply with the requirement, NMFS will issue an exemption from the requirement for a specific or indefinite amount of time. The exemption will become void if ownership of the fishing vessel changes.

Under the proposed rule, the existing regulations would be revised to include vessels less than 100 GRT down to a size of 12 meters in LOA. This element of the proposed rule would apply to vessels used for commercial fishing for HMS in the Convention Area, including the overlap area, either on the high seas or in waters under the jurisdiction of a foreign nation. NMFS has established

regulations, at 50 CFR 300.22(b)(3)(iii), which implement similar requirements for vessels used for fishing on the high seas in the EPO, as specified in IATTC Resolution C-18-06.

Revised Purse Seine Restrictions for Oceanic Whitetip Shark and Silky Shark and Additional Shark Release Requirement for All Vessels

The proposed rule would implement two specific provisions of CMM 2019-04: (1) An exemption from existing no-retention requirements for purse seine vessels in specific cases where an oceanic whitetip shark or silky shark is not seen during fishing operations and are delivered into the vessel hold; and (2) a requirement for vessels to haul any incidentally caught sharks alongside the vessel before being cut free in order to facilitate species identification.

Existing regulations under 50 CFR 300.226 prohibit the crew, operator, and owner on all vessels used for commercial fishing for HMS in the Convention Area from retaining on board, transshipping, storing, or landing any part or whole carcass of an oceanic whitetip shark or silky shark that is caught in the Convention Area, unless collected by an on-board observer. The proposed rule would establish an exemption for purse seine fishing vessels in the case of any silky shark or oceanic whitetip shark that is not seen during the fishing operation and is unknowingly delivered into the vessel hold and frozen. In such a case, under the proposed rule, oceanic whitetip shark and silky shark could be stored and landed, but the vessel owner or operator would be required to notify the observer and surrender the whole shark to the responsible government authorities or discard the shark at the first point of landing or transshipment. In U.S. ports the responsible government authority is the NOAA Office of Law Enforcement divisional office nearest to the port. Under the proposed rule, it would be prohibited to sell or barter oceanic whitetip shark and silky shark surrendered in this manner, but they could be donated for purposes of human consumption, consistent with any applicable laws and policies. NMFS has established regulations at 50 CFR 300.27(f) that implement a similar exemption for certain cases where a silky shark is caught and frozen as part of a purse seine operation in the EPO.

The proposed rule would also require that any shark be hauled alongside the vessel before being cut free (if on a line or entangled in a net) in order to facilitate species identification by the observer on board. This element of the proposed rule would only apply to

vessels on which a WCPFC observer or camera monitoring device are present on board.

Both of these shark elements of the proposed rule would apply to all U.S. vessels used for commercial fishing for HMS on the high seas and in exclusive economic zones in the Convention Area (excluding the overlap area).

Fishing Restrictions for Mobulid Rays

The proposed rule would implement the provisions of CMM 2019-05 for mobulid rays described above. The following five mobulid ray elements would be implemented under the proposed rule:

(1) Owners and operators would be prohibited from setting on a mobulid ray if the animal is sighted prior to a set;

(2) Owners and operators would be prohibited from retaining on board, transshipping, storing, or landing any part or whole carcass of a mobulid ray;

(3) Owners and operators would be required to release any mobulid ray unharmed, as soon as possible, in a manner that would result in the least possible harm to the individuals captured, taking into consideration the safety of the crew;

(4) Owners and operators would be required to allow observers to collect biological samples of mobulid rays, if requested to do so by a WCPFC observer; and

(5) An exemption for purse seine vessels from elements 1 and 2 in specific cases where a mobulid ray is not seen during fishing operations and is unknowingly delivered into the vessel hold. In such cases, a vessel owner or operator would be required to notify the observer on board, and surrender the whole mobulid ray at the first point of landing, to the responsible government authorities, or other competent authority, or discard it. It would be prohibited to sell or barter mobulid rays surrendered in this manner, but they could be donated for purposes of human consumption, consistent with any applicable laws and policies.

The five mobulid ray elements of the proposed rule would apply to U.S. vessels used for commercial fishing for HMS on the high seas and EEZs in the Convention Area (excluding the overlap area). The mobulid ray elements of the proposed rule are similar to provisions that have been adopted by the IATTC, as specified in Resolution C-15-04, and that have been implemented in the EPO at 50 CFR 300.27.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this proposed rule is consistent with the

WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

Coastal Zone Management Act (CZMA)

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the State of Hawaii. Determinations to Hawaii, American Samoa, CNMI and Guam were submitted on August 2, 2021, for review by the responsible state and territorial agencies under section 307 of the CZMA.

Executive Order 12866

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

Regulatory Flexibility Act (RFA)

An IRFA was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, as well as its objectives, and the legal basis for this action are contained in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. The analysis follows:

Estimated Number of Small Entities Affected

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The proposed rule would apply to owners and operators of U.S. commercial fishing vessels used to fish for HMS in the Convention Area. This includes vessels in the purse seine, longline, tropical troll (including those in American Samoa, the CNMI, Guam, and Hawaii), Hawaii handline, Hawaii pole-and-line, and west coast-based albacore troll fleets. For the purpose of this analysis, the number of vessels registered to fish for HMS in the Convention Area in 2020 is used as an estimate for the number of future affected fishing vessels. The estimated

number of affected fishing vessels is as follows based on the number of vessels reported in the 2021 U.S. Annual Report Part 1 to WCPFC (for the 2020 fishing year): 23 purse seine vessels, 158 longline vessels, 21 albacore troll vessels, 1,742 tropical troll and handline vessels, and 2 pole-and-line vessels. Thus, the total estimated number of vessels that would be subject to the rule is 1,946.

Based on limited financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses in all the fleets, except the purse seine fleet, are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$11.0 million. Within the purse seine fleet, analysis of revenues, by vessel, for 2018–2020 reveals that average annual per-vessel revenue was about \$9,260,000 (NMFS unpublished data on catches combined with fish price data from https://investor.thaiunion.com/raw_material.html accessed on May 6, 2021). Fifteen of the purse seine vessels active in that period had estimated average annual revenues of less than \$11 million, and thus are considered to be small entities.

Recordkeeping, Reporting, and Other Compliance Requirements

The reporting, recordkeeping and other compliance requirements of this proposed rule are described earlier in the preamble. There is one new collection-of-information associated with IMO number requirements included in this proposed action that is subject to the Paperwork Reduction Act. That collection-of-information requirement is described more fully in the Paperwork Reduction Action subsection below. The classes of small entities subject to the requirements and the costs of complying with the proposed requirements are described below to the extent possible:

Non-entangling FAD Element: To comply with this element of the proposed rule, affected vessel owners and operators would be required to use specific materials and design specifications for FADs that are deployed in, or that may drift into, the WCPFC Convention Area. This element of the proposed rule would not establish any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the proposed rule would apply to all purse seine vessels used for commercial fishing for HMS on the high seas and in exclusive economic zones in the Convention Area (excluding the overlap area). A majority of the purse seine vessels are already subject to equivalent requirements in the EPO. NMFS has established regulations for measures adopted by the IATTC (see 83 FR 15503, April 11, 2018; 83 FR 62732, December 6, 2018), which became effective on January 1, 2019. Of the 23 purse seine vessels to which this element of the proposed rule would apply, 13 are currently active on both the WCPFC Record of Fishing Vessels (RFV) and the IATTC Regional Vessel Register (RVR), meaning that they are authorized to fish in both the WCPO and the EPO. It is expected that the owners and operators of purse seine vessels on both lists would therefore already be responsible for implementing the FAD design requirements in the EPO, as specified in 50 CFR 300.28(e). All 23³ purse seine vessels currently on the WCPFC RFV are also on the International Seafood Sustainability Foundation (ISSF) ProActive Vessel Register (PVR), and their owners and operators have agreed to comply with ISSF-adopted conservation measures, which include the use of non-entangling FADs or lower entanglement risk FADs. The ISSF lower entanglement risk FADs meet the same design specifications and material requirements in this element of the proposed rule. Therefore, for the owners and operators of all purse seine vessels that would be subject to the proposed rule, NMFS expects that there would be no change in the materials they currently use to design FADs.

To the extent that any of those vessels are not already implementing the design specifications included in the proposed rule, and for any new purse seine vessels that enter the fishery, there would likely be some costs associated with complying with this element of the proposed rule. However, it is not possible to predict the costs associated with any certainty, as FAD designs vary between vessels, and the availability of materials is expected to vary over time. If specific non-entangling FAD materials were difficult or costly to obtain (e.g., netting with 7 cm mesh size), it could affect a vessel's ability to fish on FADs. In cases where vessels choose to forego fishing on FADs, it could increase operating costs in the form of increased fuel usage to fish on unassociated

³ As of July 2021, 9 of the 23 purse seine vessels used as a baseline in this analysis are no longer flagged to the United States, and have been removed from the ISSF PVR.

schools of fish instead of fishing on FADs.

Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess.

IMO Number Element: This element of the proposed rule would require owners of fishing vessels less than 100 GRT down to a size of 12 meters LOA to obtain an IMO number. This element of the proposed rule would establish new recordkeeping requirements (within the meaning of the Paperwork Reduction Act). That collection-of-information requirement is described more fully in the Paperwork Reduction Action subsection below. The costs of complying with this requirement are described below to the extent possible.

This element of the proposed rule would apply to vessels used for commercial fishing for HMS in the Convention Area (including the overlap area), either on the high seas or in waters under the jurisdiction of a foreign nation. Existing regulations at 50 CFR 300.217(c) require that vessels at least 100 GRT obtain an IMO number, so most entities that would be required to obtain an IMO number already have them. NMFS estimates that 48 fishing vessels would initially be subject to the proposed expanded requirement, 45 longline vessels and three troll vessels. NMFS has established regulations, at 50 CFR 300.22(b)(3)(iii), which implement similar requirements for vessels fishing on the high seas in the EPO. NMFS estimates that all but one of the 48 fishing vessels initially subject to this element of the proposed rule are already subject to the IATTC IMO requirements in the EPO. NMFS projects that as fishing vessels enter the fishery in the future, roughly four per year would be required to obtain IMO numbers.

The requirement to obtain an IMO number would be a one-time requirement; once a number is issued for a vessel, the owner of the vessel would be in compliance for the remainder of the vessel's life, regardless of changes in ownership. Completing and submitting the application form (which can be done online and requires no fees) would take about 30 minutes per applicant, on average. Assuming a value of labor of approximately \$26 per hour and communication costs of about \$1 per application, the (one-time) cost to each affected entity would be about \$14. Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess.

Shark Element (1): This element of the proposed rule would provide an exemption to existing oceanic whitetip

and silky shark prohibitions in the case where an oceanic whitetip shark or silky shark is not seen during fishing operations and is unknowingly delivered into the vessel hold and frozen as part of a purse seine operation. It would not establish any new reporting and recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the proposed rule would apply specifically to U.S. purse seine vessels used for commercial fishing for HMS on the high seas or in EEZs within the Convention Area (excluding the overlap area). It is not expected that these proposed changes would cause any modification to the vessels' fishing practices, as the expectation is that they would not have seen the animal prior to delivering it into the hold. Although this element would relieve vessel owners and operators from the burden associated with the existing regulation, qualifying for the exemption could bring modest costs. If the option of discarding the animal at the first point of landing or transshipment is taken, no additional costs would be expected. If the option of surrendering the shark to the responsible government authority is taken, there could be moderate costs in terms of crew labor that may be necessary to contact the authority and surrender the shark. Under either option, the cost is would be offset by the reduced risk of monetary fines that may be associated with current regulations prohibiting the retention of oceanic whitetip sharks and silky sharks.

Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess.

Shark Element (2): This element of the rule would require that any incidentally caught shark be hauled alongside the vessel before being released in order to facilitate better species identification by the WCPFC observer on board. It would not establish any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the proposed rule would apply to all U.S. vessels used for commercial fishing for HMS on the high seas or in EEZs within the Convention Area (excluding the overlap area); however, it would only apply to vessels on which an observer or electronic monitoring camera is present, so for the foreseeable future, it is expected that it

would apply only to purse seine and longline vessels, which currently carry observers.

For purse seine vessels, it is expected that an observer would be present on 100 percent of trips.⁴ It is expected that in most cases, the fish would be released after it is brailled from the purse seine and brought on deck. In these cases, the labor involved would probably be little different than current practice for discarded sharks. If the vessel operator and crew determined that it is possible to release the fish before it is brought on deck, it may involve greater intervention and time on the part of crew members to ensure that the observer is able to properly identify species. To the extent that time could otherwise be put to productive activities, this could lead to increased costs associated with labor.

For longline vessels, it is expected that an observer would be present on ~20 percent of trips for deep-set trips and 100 percent on shallow-set trips.⁵ In these cases, it is expected that under current fishing practices, the fish would be released as it is brought to the side of the vessel, such as by cutting the line or removing the hook. In these cases, minimal if any costs would be incurred.

This element of the proposed rule is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

Mobulid Ray Element (1): This element of the proposed rule would prohibit vessels from targeting mobulid rays or making a set in instances in which a mobulid ray is sighted prior to a set. This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the proposed rule would apply to all U.S. vessels used for commercial fishing for HMS on the high seas or in the exclusive economic zones in the Convention Area (excluding the overlap area). U.S. fishing vessels in the WCPO are not known to intentionally target mobulid rays, although they are caught incidentally in both the purse seine and longline fleets and less

⁴ Due to the impacts of COVID-19, purse seine vessels have been exempted from 100 percent observer coverage requirements between March 2020 and January 2022 (see 86 FR 31178; June 11, 2021 and 86 FR 48916; September 1, 2021). This analysis assumes 100 percent observer coverage on purse seine vessels, as required under the WCPFC and the South Pacific Tuna Treaty.

⁵ Based on average percent observer coverage on Hawaii longline vessels, 2015–2019.

frequently in the tropical handline and pole-and-line fleets. It is unknown whether U.S. purse seine vessels currently intentionally set on mobulid rays. If such a practice does exist, this element of the proposed rule would be expected to impact purse seine vessels by prohibiting them from setting on a mobulid ray if sighted prior to a set.

In the event that a mobulid ray is sighted prior to a desired set, complying with the proposed rule could cause forgone fishing opportunities and result in economic losses. It is difficult to project the frequency of pre-set mobulid ray-sighting events because such events are not recorded. Historical data on mobulid ray interactions are available, but interactions are not equivalent to pre-set sightings. According to anecdotal information from purse seine vessel operators, a majority of mobulid rays are not seen before the set commences. Nonetheless, historical mobulid ray interaction rates can provide an upper bound estimate of the frequency of pre-set mobulid ray sighting events in the future. Based on unpublished observer data from the Pacific Islands Forum Fisheries Agency (FFA) observer program between 2015 and 2019, mobulid ray interactions occur in approximately 3 percent of observed purse seine sets on average in the purse seine fishery (100 percent of sets were observed in 2015–2019). In those instances where a mobulid ray is sighted prior to a set, the vessel operator would have to wait and/or move the vessel to find the next opportunity to make a set. The consequences in terms of time lost, distance travelled, and associated costs cannot be projected with any certainty, but a range of possible outcomes can be foreseen. At worst, the operator would lose the opportunity to make a set for the remainder of the day. At best, the operator would find an opportunity to make a set soon after the event—that is, on the same day, and limited costs would be incurred. This element of the proposed rule is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

Mobulid Ray Element (2): This element of the proposed rule would prohibit vessels from retaining on board, transshipping, or landing any mobulid ray in the Convention Area. This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the proposed rule would apply to all U.S. vessels used for

commercial fishing for HMS on the high seas or in the EEZs in the Convention Area (excluding the overlap area). U.S. fishing vessels in the WCPO are not known to intentionally target mobulid rays, although they are caught incidentally in both the purse seine and longline fleets and less frequently in the tropical handline and pole-and-line fleets. There are no recorded interactions with mobulid rays in the tropical troll or albacore troll fleets.

Unpublished observer data from the FFA observer program and NOAA's Pacific Islands Observer program indicate that between 2015 and 2019, an estimated two mobulid rays were retained per year in the purse seine fishery, on average, and in the longline fishery, it is estimated that that less than one mobulid ray was retained per year, on average. The remainder of the mobulid catch was released alive or discarded dead. In the tropical handline and pole-and-line fleets, there were no reported mobulid rays retained between 2015 and 2019. This requirement would foreclose harvesting businesses' opportunity to retain and sell or otherwise make use of any species of mobulid ray that may previously have been retained by U.S. fishing vessels. The consequences in terms of opportunity loss cannot be projected with any certainty; however, available data indicate that there is no history of commercial sale of mobulid rays by U.S. fishing vessels. Additionally, existing requirements under 50 CFR 300.27 prohibit vessels from retaining on board, transshipping, storing, landing, or selling any part or whole carcass of a mobulid ray that is caught in the IATTC Convention Area in the EPO. For those vessels that fish in both the WCPO and EPO, it is expected that they would already be responsible for implementing the retention prohibition requirements included in the EPO.

This element of the proposed rule is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

Mobulid Ray Element (3): This element of the proposed rule would require vessels to release any mobulid ray caught in the Convention Area as soon as possible and in a manner that results in as little harm to the animal as possible, without compromising the safety of any persons. This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the proposed rule would apply to all U.S. vessels used for commercial fishing for HMS on the high seas or in the EEZs in the Convention Area (excluding the overlap area). The requirement could bring costs in the form of reduced efficiency of fishing operations if vessels were required to change their release/discard practices relative to current practices.

For purse seine vessels, it is expected that in most cases, the animal would be released after it is brailled from the purse seine and brought on deck. In these cases, the labor involved would probably be little different than current practice for discarded rays. If the vessel operator and crew determined that it is possible to release the animal before it is brought on deck, this would likely involve greater intervention and time on the part of crew members, which would be costly to the extent that time could otherwise be put to productive activities.

Existing regulations under 50 CFR 300.27 require that vessels promptly release any mobulid ray caught in the IATTC Convention Area, unharmed, and as soon as it is seen in the net or on deck. As noted above, most of the purse seine vessels registered on the WCPFC RFV are also registered to fish on the IATTC RFV, and fish in both the WCPO and the EPO, so it is expected that those vessels would already be responsible for implementing the release requirements in the EPO.

For longline, tropical handline and pole-and-line vessels, it is expected that the animal would be quickly released as it is brought to the side of the vessel, such as by cutting the line or removing the hook. In these cases, minimal if any costs would be incurred.

This element of the proposed rule is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

Mobulid Ray Element (4): This element of the proposed rule is a limited exemption from the mobulid retention prohibition and the mobulid release requirement in that vessel owners and operators would be relieved of those requirements in those cases where a WCPFC observer collects, or requests assistance to collect, a sample of a mobulid ray, if requested to do so by a WCPFC observer. This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below to the extent possible.

This element of the proposed rule would apply to all U.S. vessels used for

commercial fishing for HMS on the high seas or in the EEZs in the Convention Area (excluding the overlap area). Under existing regulations, operators and crew of vessels with WCPFC Area Endorsements (*i.e.*, vessels authorized to be used for commercial fishing for HMS on the high seas in the Convention Area) are already required to assist WCPFC observers in the collection of samples. This element of the proposed rule would effectively expand that requirement—specifically for mobulid rays—to vessels not required to have WCPFC Area Endorsements. This element may bring additional costs to fishing businesses because it may require the owner, operator, and crew to assist the observer in the collection of samples if requested to do so by the observer. It is not possible to project how often observers would request assistance in collecting samples. When it does occur, it is not expected that sample collection would be so disruptive as to substantially delay or otherwise impact fishing operations, but the fishing business could bear small costs in terms of crew labor, and possibly the loss of storage space that could be used for other purposes. It is not expected to require any professional skills that the affected vessel owners, operators and crew do not already possess.

Mobulid Ray Element (5): This element of the proposed rule would provide a limited exemption to elements 1 and 2 in specific cases where a mobulid ray is not seen during fishing operations and is unknowingly delivered into the vessel hold and frozen. It would not establish any new reporting and recordkeeping requirements (within the meaning of the Paperwork Reduction Act). The costs of complying with this requirement are described below.

This element of the proposed rule would apply specifically to U.S. purse seine vessels used for commercial fishing for HMS on the high seas or in EEZs within the Convention Area (excluding the overlap area). It is not expected that these proposed changes would cause any modification to the vessels' fishing practices, as the expectation is that they would not have seen the animal prior to delivering it into the hold. Although this element would relieve vessel owners and operators from the burden associated with the existing regulation, the steps for discarding or surrendering the animal could bring modest costs. If the option of discarding the animal at the first point of landing or transshipment is taken, no additional costs would be expected. If the option of surrendering

the mobulid ray to the responsible government authority is taken, there could be moderate costs in terms of crew labor that may be necessary to contact the authority and surrender the animal. Under either option, the cost is would be offset by the reduced risk of monetary fines.

Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess.

Disproportionate Impacts

Small entities would not be disproportionately affected relative to large entities. Nor would there be disproportionate economic impacts based on home port. As indicted above, there could be disproportionate impacts according to vessel size for the IMO number requirement.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that conflict with or duplicate the proposed regulations. NMFS has identified several Federal regulations that overlap with the proposed regulations. These include: The proposed non-entangling FAD requirements, which overlap with existing EPO regulations at 50 CFR 300.28(e); the proposed IMO number requirements, which overlap with existing EPO regulations at 50 CFR 300.22(b)(3)(iii); the proposed purse seine shark retention requirements, which overlap with existing EPO regulations at 50 CFR 300.27(f); and the proposed mobulid ray requirements, which overlap with existing EPO regulations at 50 CFR 300.27(i). The regulations for the EPO apply when vessels fish in the EPO, including the area of overlapping jurisdiction between the IATTC and the WCPFC (overlap area). Aside from the IMO number requirements, the regulations under this proposed rule would apply in the WCPO, excluding the overlap area. The changed IMO number requirements under this proposed rule would also apply in the overlap area.

Alternatives to the Proposed Rule

NMFS has not identified any significant alternatives to the proposed rule, other than the no-action alternative. Taking no action could result in lesser adverse economic impacts than the proposed action for many affected entities, but NMFS has determined that the no-action alternative would fail to accomplish the objectives of the WCPFC Implementation Act, including satisfying the obligations of the United

States as a Contracting Party to the Convention.

Paperwork Reduction Act

This proposed rule contains one collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act. The collection-of-information requirement in this proposed rule relates to the collection under Control Number 0648–0595, “Western and Central Pacific Fisheries Convention Vessel Information Family of Forms.” However, due to multiple concurrent actions for that collection, the collection-of-information requirement in this proposed rule will be assigned a temporary Control Number that will later be merged into Control Number 0648–0595. The proposed rule includes new collection-of-information requirement for the owners of certain fishing vessels to ensure that IMO numbers are issued for the vessels. This would be a one-time requirement; no renewals or updates would be required during the life of a vessel. A fishing vessel owner would request the issuance of an IMO number by submitting specific information about the vessel and its ownership and management to IHS Maritime, which issues IMO numbers on behalf of the IMO. If a fishing vessel requires an exemption, the owner must provide the required information to NMFS. Public reporting burden for a vessel to acquire an IMO number is estimated to average approximately 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at www.reginfo.gov/public/do/PRAMain.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of

information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: September 30, 2021.

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

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

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.217, revise paragraph (c)(2) to read as follows:

§ 300.217 Vessel identification.

* * * * *

(c) * * *

(2) The owner of a fishing vessel of the United States used for commercial fishing for HMS in the Convention Area, either on the high seas or in waters under the jurisdiction of any nation other than the United States, shall request and obtain an IMO number for the vessel if the gross tonnage of the vessel, as indicated on the vessel's current Certificate of Documentation issued under 46 CFR part 67, is at least 100 GRT or 100 GT ITC, or less than 100 GRT down to a size of 12 meters in overall length. An IMO number may be requested for a vessel by following the instructions given by the administrator of the IMO ship identification number scheme; those instructions are currently available on the website of IHS Markit at: www.imonumbers.lrfairplay.com.

* * * * *

■ 3. In § 300.222, add paragraphs (bbb) through (eee) to read as follows:

§ 300.222 Prohibitions.

* * * * *

(bbb) Fail to comply with the FAD design requirements in § 300.223(b)(4).

(ccc) Fail to comply with the requirements of any exemption under § 300.226(e).

(ddd) Fail to comply with any of the restrictions, prohibitions or requirements specified in § 300.229.

(eee) Fail to comply with the handling and release requirements in § 300.230.

■ 4. In § 300.223, add paragraph (b)(4) to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(b) * * *

(4) FAD design requirements to reduce entanglements. Owners and operators of fishing vessels of the United States equipped with purse seine gear shall ensure that all FADs on board or deployed from the vessel in the Convention Area comply with the following design requirements:

(i) *Raft*. If the FAD design includes a raft (e.g., flat raft or rolls of material) and if mesh netting is used as part of the structure of the raft, the mesh netting shall have a stretched mesh size less than 7 centimeters and the mesh net must be tightly wrapped such that no netting hangs below the raft when deployed; and

(ii) *Subsurface*. Any netting used in the subsurface structure of the FAD must be tightly tied into bundles (“sausages”), or if not tightly tied into bundles, then must be made of stretched mesh size less than 7 centimeters and be configured as a panel that is weighted on the lower end with enough weight to keep the netting vertically taut in the water column.

* * * * *

■ 5. In § 300.226, revise paragraphs (a) and (b) and add paragraph (e) to read follows:

§ 300.226 Oceanic whitetip shark and silky shark.

* * * * *

(a) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS cannot retain on board, transship, store, or land any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) or silky shark (*Carcharhinus falciformis*) that is caught in the Convention Area, either on the high seas or in an exclusive economic zone, unless subject to the provisions of paragraph (c) or (e) of this section.

(b) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must release any oceanic whitetip shark or silky shark that is caught in the Convention Area, either on the high seas or in an exclusive economic zone, as soon as possible after the shark is caught

and brought alongside the vessel, and take reasonable steps for its safe release, without compromising the safety of any persons, unless subject to the provisions of paragraph (c) or (e) of this section.

* * * * *

(e) Paragraphs (a) and (b) of this section do not apply in the event that any oceanic whitetip shark or silky shark is not seen by the crew, operator, or owner of a purse seine vessel, or any WCPFC observer on board that vessel, prior to being delivered into the vessel hold and frozen. In such a case, oceanic whitetip shark or silky shark could be stored and landed, but the vessel owner or operator must notify the on-board observer and surrender the whole shark to the responsible government authorities or discard the shark at the first point of landing or transshipment. In U.S. ports, the responsible government authority is the NOAA Office of Law Enforcement. Any oceanic whitetip shark or silky shark surrendered in this manner may not be sold or bartered, but may be donated for human consumption, consistent with any applicable laws and policies.

■ 6. Add § 300.229 to read as follows:

§ 300.229 Mobulid ray restrictions.

The requirements of this section apply in all exclusive economic zones and all areas of high seas in the Convention Area, excluding the Overlap Area. For the purpose of this section, mobulid ray is defined as any ray in the family Mobulidae, which includes manta rays and devil rays (*Mobula* spp.).

(a) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS cannot set or attempt to set on or around a mobulid ray if the animal is sighted at any time prior to the commencement of the set or the attempted set.

(b) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS cannot retain on board, transship, store, or land any part or whole carcass of a mobulid ray, unless subject to the provisions of paragraphs (d) through (f) of this section.

(c) The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must release any mobulid ray, as soon as possible, and must ensure that all reasonable steps are taken to ensure its

safe release, without compromising the safety of any persons, unless subject to the provisions of paragraphs (d) through (f) of this section.

(d) Paragraphs (b) and (c) of this section do not apply in the event that a WCPFC observer collects, or requests the assistance of the vessel crew, operator, or owner in the collection of, samples of a mobulid ray in the Convention Area.

(e) The crew, operator, and owner of a vessel must allow and assist a WCPFC observer to collect samples of a mobulid ray in the Convention Area, if requested to do so by WCPFC observer.

(f) Paragraphs (b) and (c) of this section do not apply in the event that a mobulid ray is not seen by the crew, operator, or owner of a purse seine vessel, or any WCPFC observer on board that vessel, prior to being delivered into the vessel hold and frozen. In such a case, a mobulid ray could be stored and landed, but the vessel owner or operator must notify the on-board observer and surrender the whole ray to the responsible government authorities or discard the animal at the first point of landing or transshipment. In U.S. ports, the responsible government authority is the NOAA Office of Law Enforcement. Any mobulid ray shark surrendered in this manner may not be sold or bartered, but may be donated for human consumption, consistent with any applicable laws and policies.

■ 7. Add § 300.230 to read as follows:

§ 300.230 Shark handling and release.

(a) The requirements of paragraph (b) of this section apply to all fishing vessels of the United States used for commercial fishing for HMS. The requirements apply in all exclusive economic zones and all areas of high seas in the Convention Area, excluding the Overlap Area. The requirements apply only if there is a WCPFC observer or camera monitoring device on board the fishing vessel.

(b) Prior to releasing any shark that is caught during fishing operations and not brought on board the fishing vessel, the owner and operator, without compromising the safety of any persons, shall ensure that the shark is brought alongside the vessel for identification purposes.

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