

Petitioner requests the substitution of channel 20 for channel 10 at in the Table of Allotments.

DATES: Comments must be filed on or before March 7, 2022 and reply comments on or before March 21, 2022.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Christina A. Burrow, Esq., Cooley LLP, 1299 Pennsylvania Avenue NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418-1647; or Joyce Bernstein, Media Bureau, at Joyce.Bernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: In support of its channel substitution request, the Petitioner states that the Commission has recognized that very high frequency (VHF) channels have certain characteristics that pose challenges for their use in providing digital television service and the station has received many complaints from viewers unable to receive a reliable signal on channel 10. An analysis using the Commission's *TVStudy* software tool indicates that KTVQ's move from channel 10 to channel 20 is predicted to create a small area where approximately 3,624 persons are predicted to lose service, but that the loss area, is partially overlapped by the noise limited contours of Scripps' owned TV translator stations K15LB-D, Red Lodge, Montana, and K28ON-D, Castle Rock, Montana, both of which carry the CBS network programming aired by KTVQ. Accordingly, only 483 persons would lose CBS service if KTVQ moves to channel 20, which Petitioner argues is *de minimis*. In addition, the Engineering Statement shows that the loss area is also partially overlapped by the noise limited contours of KSVI (ABC) and KULR (NBC), Billings, Montana; KHMT (FOX), Hardin, Montana; and KSGW (ABC/FOX), Sheridan, Wyoming. Thus, viewers in the loss area will continue to have access to major network programming.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, MB Docket No. 22-39; RM-11917; DA 22-87, adopted January 26, 2022, and released January 26, 2022. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to FCC504@fcc.gov or call the Consumer & Government Affairs Bureau at (202)

418-0530 (VOICE), (202) 418-0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of Allotments under Montana by revising the entry for Billings to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *				
(j) * * *				
Community		Channel No.		
*	*	*	*	*
MONTANA				
Billings		11,	* 16,	18, 20
*	*	*	*	*

[FR Doc. 2022-02337 Filed 2-3-22; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

[Docket No. 220128-0036]

RIN 0648-BK88

International Fisheries; Pacific Tuna Fisheries; Purse Seine Observer Exemptions in the Eastern Pacific Ocean

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the authority of the Marine Mammal Protection Act (MMPA) and the Tuna Conventions Act (TCA) of 1950, as amended, to allow NMFS to issue temporary exemptions from purse seine observer requirements in the eastern Pacific Ocean (EPO) in accordance with procedures adopted by Parties to the Agreement on the International Dolphin Conservation Program (AIDCP) and members of the Inter-American Tropical Tuna Commission (IATTC). This proposed rule is necessary for the continuity of fishing activities for large U.S. purse seine vessels and for the United States to satisfy its obligations as a member of the IATTC.

DATES: Comments on the proposed rule must be submitted in writing by March 7, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0111, 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-2021-0111" in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to William Stahnke, NMFS West Coast Region (WCR), Long Beach Office, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier "NOAA-NMFS-2021-0111" in the comments.

Instructions: Comments must be submitted by one of the above methods

to ensure they are received, documented, and considered by NMFS. 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. 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, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of supporting documents that were prepared for this proposed rule, including the Regulatory Impact Review, are available via the Federal e-Rulemaking Portal:

www.regulations.gov, docket NOAA–NMFS–2021–0111, or contact William Stahnke, NMFS WCR, Long Beach Office, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802, or WCR.HMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: William Stahnke, NMFS WCR, at (562) 980–4088.

SUPPLEMENTARY INFORMATION:

Background on the AIDCP and IATTC

The AIDCP has been ratified or acceded by 14 countries, including the United States, and is applied provisionally by another two. Among the objectives of the AIDCP are to reduce dolphin mortalities and ensure the long-term sustainability of the tuna stocks within the AIDCP Agreement Area.¹ The full text of the AIDCP is available online at: https://www.iattc.org/PDFFiles/AIDCP/_English/AIDCP.pdf.

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission (1949 Convention). The 1949 Convention was updated by the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The full text of the Antigua Convention is available online at: https://www.iattc.org/PDFFiles/IATTC-Instruments/_English/IATTC_

Antigua Convention%20vJun%202003.vpdf.

The IATTC consists of 21 member nations and five cooperating non-member nations. The IATTC facilitates scientific research, as well as the conservation and management, of tuna and tuna-like species in the IATTC Convention Area.² The IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, sharks, and billfish stocks in the IATTC Convention Area to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

International Obligations of the United States Under the Antigua Convention and AIDCP

As a Party to the Antigua Convention and AIDCP and a Member of the IATTC, the United States is legally bound to implement decisions of the IATTC under the Tuna Conventions Act (16 U.S.C. 951 *et seq.*) and decisions of the Parties to the AIDCP under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*). The Tuna Conventions Act directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS. The MMPA directs the Secretary of Commerce to issue regulations, and revise those regulations as may be appropriate, to implement the International Dolphin Conservation Program. As with the TCA, the authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

AIDCP and IATTC Observer Program and U.S. Observer Requirements

U.S. large purse seine vessels (*i.e.*, those greater than 400 short ton carrying capacity) fishing for tuna in the EPO are subject to 100 percent observer coverage obligations under Annex II, paragraph 2 of the AIDCP and IATTC Resolution C–09–04, *Resolution on the International Dolphin Conservation Program*. The United States implemented this requirement for 100 percent observer

coverage into domestic regulation at 50 CFR 216.24(e)(1), which requires vessel permit holders to allow an authorized observer to accompany the vessel on all fishing trips in the Eastern Tropical Pacific (ETP) for the purpose of collecting information pertaining to research and observing operations and prohibits vessels that fail to carry an observer in accordance with these requirements from engaging in fishing operations. The United States does not have its own national observer program for the large tuna purse seine fishery and relies solely on the AIDCP/IATTC program to place observers on U.S. large purse seine vessels. The observers are typically foreign nationals that board U.S. vessels at ports throughout Central and South America, as well as American Samoa.

AIDCP and IATTC Agreement for Exemptions and NMFS Emergency Observer Exemption Rule

On April 16, 2020, the IATTC issued a memorandum (Ref.: 0173–420)³ indicating that the AIDCP Parties and the IATTC Members adopted procedures to provide for the temporary exemption, on a case-by-case basis, from purse seine observer requirements in the EPO for each vessel and trip where it is not possible to place an observer due to operational and logistical constraints arising from actions taken by governments or organizations to safeguard health in response to the COVID–19 Pandemic. Under these exemption procedures, owners and operators of vessels must continue requesting the placement of observers in accordance with pre-existing procedures. An AIDCP/IATTC exemption is considered granted when the IATTC Director, or the head of the field office and the national observer program office of AIDCP Parties, certify the unavailability of an observer for the vessel. These procedures were set to expire June 1, 2020, but the AIDCP/IATTC issued several subsequent memoranda extending the procedures, most recently until March 31, 2022 (0564–420; December 16, 2021), and they are expected to be extended further. The current AIDCP/IATTC exemption procedures are discussed in greater detail in the next section of this preamble.

In addition to the AIDCP/IATTC procedures, NMFS needed authority to provide exemptions from domestic regulations requiring observer coverage. On March 27, 2020, NMFS published a

¹ Defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N latitude, 150° W longitude, and 50° S latitude.

² Defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N latitude, 150° W longitude, and 50° S latitude.

³ Copies of IATTC Memo #0173–420 as well as the original NMFS exemption procedures can be found in the docket for this rulemaking.

temporary rule for an emergency action in response to the COVID-19 Pandemic (85 FR 17285) that provides the authority to waive observer coverage requirements implemented under certain statutes, including the MMPA and TCA (“NMFS Emergency Rule”). That NMFS Emergency Rule permits NMFS to waive observer coverage requirements if:

(1) Placing an observer conflicts with travel restrictions or other requirements addressing COVID-19 related concerns issued by local, state, or national governments, or the private companies that deploy observers pursuant to NMFS regulations; or

(2) No qualified observer(s) are available for placement due to health, safety, or training issues related to COVID-19.

That temporary NMFS Emergency Rule was extended and is currently in effect until March 26, 2022, or until the Secretary of Health and Human Services determines that the COVID-19 Pandemic is no longer a public health emergency, whichever is earlier (March 29, 2021; 86 FR 16307). Pursuant to the NMFS Emergency Rule, and in accordance with exemption procedures adopted by the AIDCP/IATTC, NMFS West Coast Region (WCR) established a process, subject to revocation or extension as circumstances warrant, for issuing temporary exemptions on an individual basis to the U.S. regulatory requirements for observer requirements for large U.S. tuna purse seine vessels in the EPO. This process, which NMFS is proposing to maintain under the proposed rule, is discussed in greater detail in the next section of this preamble.

Proposed Amendment to 50 CFR 216.24(e) To Allow for Exemptions From Purse Seine Observer Requirements in the EPO

Though difficult to predict, NMFS expects travel restrictions will likely continue in American Samoa and other port States where observers are placed on purse seine vessels beyond March 26, 2022. As noted, the AIDCP/IATTC exemptions procedures have been extended until March 31, 2022, and are expected to be extended further. However, the temporary NMFS Emergency Rule that provides the United States domestic authority to waive observer coverage for large EPO purse seine vessels will expire on March 26, 2022. After this time, NMFS will no longer have the authority to issue exemptions from observer requirements to large purse seine vessels fishing in the EPO. Without the authority to issue observer exemptions, the United States

would likely be the only AIDCP Party and IATTC Member unable to issue these exemptions to its purse seine vessels. This proposed rule is therefore necessary to allow NMFS to continue issuing temporary exemptions from the observer requirements beyond the NMFS Emergency Rule expiration date in March 2022 in accordance with continuing AIDCP/IATTC exemption procedures and, potentially, in accordance with exemption procedures adopted in the future. Because the AIDCP contains an unqualified requirement for 100 percent observer coverage, NMFS anticipates that the AIDCP/IATTC will only adopt exemption procedures in the future under emergency circumstances similar to the COVID-19 pandemic and that those procedures would be similarly limited to single fishing trips for which it would be impossible to place an observer on a vessel.

This rule is proposed under the authorities of the MMPA and TCA. This rule would amend § 216.24(e)(1) to add a provision that will allow NMFS to issue temporary exemptions from purse seine observer requirements, on a case-by-case basis, in accordance with procedures adopted by the Parties to the AIDCP and Members of the IATTC. These temporary exemptions would apply to U.S. large purse seine vessels that are used to catch tropical tuna in the IATTC Convention Area and would exempt a single vessel from the requirement to carry an observer during a single fishing trip, provided the vessel complies with AIDCP/IATTC exemption procedures and with other applicable regulations and requirements. Although the proposed provision would not expire, it would only be applicable for the duration that AIDCP and IATTC observer exemption procedures are effective. In other words, the proposed provision would only give NMFS the authority to grant an exemption: (1) If the Parties to the AIDCP and Members of the IATTC have collectively agreed to adopt procedures for exempting observer coverage requirements under certain emergency circumstances; and (2) in accordance with the specific procedures adopted by AIDCP/IATTC for granting those exemptions.

NMFS will notify the affected fleet via email when the current AIDCP/IATTC emergency exemption procedures are no longer in effect. NMFS will also notify the affected fleet via email and the public by publication of a notice in the **Federal Register** if new exemption procedures are adopted by the Parties to the AIDCP and Members of the IATTC. New exemptions would not be issued by NMFS when AIDCP/IATTC exemption

procedures are not in effect and exemptions issued by NMFS while AIDCP/IATTC exemption procedures are in effect would only be effective for as long as the AIDCP/IATTC procedures remain in effect.

Process for Obtaining an Observer Exemption From the IATTC

As previously noted, the AIDCP Parties and the IATTC Members adopted procedures for the temporary exemption, on a case-by-case basis, of the requirement to carry an observer for trips where it is not possible to place an observer on a vessel. The process for a vessel to be granted an exemption from the IATTC is outlined below:

- Vessel owners/operators planning a fishing trip in the EPO are to contact the IATTC Director and Observer Coordinator to request an observer.

- If the IATTC Director, or the head of the field office and the national program office, certifies, in coordination with Flag State Authorities, that it is not possible to place an observer on the vessel, then an exemption from AIDCP observer requirements will be considered granted for the fishing trip.

Process for Obtaining an Observer Exemption From NMFS

In addition, U.S. large purse seine vessels must also obtain from NMFS WCR an individual exemption from regulatory observer coverage requirements. As discussed previously, NMFS has been issuing those exemptions under the authority of the NMFS Emergency Rule; however, if finalized, this proposed rule would provide NMFS the authority to continue issuing such exemptions while AIDCP/IATTC exemption procedures are in effect. NMFS would continue using the existing process for a U.S. vessel to obtain an exemption from domestic regulations, as outlined below:

- Once NMFS West Coast Region receives certification from the IATTC or the vessel owner/operator that an exemption has been granted, NMFS will confirm that the vessel owner/operator meets the criteria set forth in the AIDCP/IATTC exemption procedures.

- If the criteria are met, NMFS will issue the permit holder a letter documenting that the requirement to carry an observer has been exempted for that vessel trip.

- A NMFS observer exemption may be requested from the NMFS West Coast Region, Sustainable Fisheries Division, Highly Migratory Species (HMS) Branch, via *WCR.HMS@noaa.gov*.

NMFS anticipates working in coordination with the IATTC and being able to provide individual vessel

exemptions without significant delay to U.S. large purse seine vessels. Any changes to these procedures will be notified by email directly and/or via relevant email distribution lists to vessel owners, operators, and permit holders.

Dolphin-Safe Requirements

It should be noted that although these proposed regulations will allow NMFS to waive the regulatory requirements in § 216.24(e)(1) to carry an observer, tuna caught in the ETP on a trip without an AIDCP-approved observer will be ineligible for a United States dolphin-safe label or an AIDCP Dolphin-Safe Tuna Certificate. With respect to the U.S. dolphin-safe label, any tuna harvested by large purse seine vessels fishing in the ETP is subject to U.S. dolphin-safe labeling requirements at 50 CFR part 216, subpart H, and also subject to the authority of the International Dolphin Conservation Program Act (ICDPA; 16 U.S.C. 1417). Without an AIDCP-approved observer on a fishing trip (even with an observer exemption), the Tuna Tracking Forms (TTFs) cannot be completed by an observer for that trip and, thus, the tuna would be ineligible for a dolphin-safe label. TTFs are necessary for the issuance of the U.S.-required IDCP-member nation certification to accompany the NOAA Form 370 for tuna harvested by large purse seine vessels in the ETP. However, such tuna harvested in the ETP without an observer may still be legally sold in the United States as non-dolphin-safe, provided it was harvested in accordance with other relevant requirements.

With respect to the AIDCP Dolphin-Safe Tuna Certificate, it should also be noted that the AIDCP Parties did not waive the requirement for the observer's role in verifying the dolphin-safe status of the catches under the AIDCP Dolphin-Safe Tuna Certification Program. Therefore, any trip by a vessel of an AIDCP Party that is made without an observer would not have valid TTFs and, thus, no valid AIDCP Dolphin-Safe Tuna Certificate can be issued by a Party for any catches made on that particular fishing trip.

Proposed Amendments to 50 CFR 300.24 and 300.25 To Incorporate Existing Purse Seine Observer Requirements Into the Regulations That Govern Eastern Pacific Tuna Fisheries

As noted earlier, the regulatory requirement for large purse seine vessels to carry observers during fishing operations in the EPO are found in 50 CFR part 216, which contains regulations governing the taking and importing of marine mammals. This

proposed rule would incorporate that requirement into 50 CFR part 300, subpart C, which contains regulations governing eastern Pacific tuna fisheries. Specifically, NMFS proposes to add to § 300.25, *Fisheries Management*, a provision that re-states, and cross-references to, the existing observer coverage requirement in § 216.24(e)(1). This provision would clarify that the requirements in § 216.24(e)(1) apply within the IATTC Convention Area. NMFS also proposes to add to § 300.24(n) a prohibition against operating a large purse seine vessel in the IATTC Convention Area in contravention of applicable observer requirements.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Marine Mammal Protection Act, Tuna Conventions Act of 1950, and other applicable laws.

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

There are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act (PRA), and the existing collection-of-information requirements still apply under Office of Management and Budget (OMB) Control Numbers 0648–0148 (West Coast Region Pacific Tuna Fisheries Logbook, Fish Aggregating Device Form, and Observer Safety Reporting) and 0648–0335 (Fisheries Certificate of Origin). 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 PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: <https://www.reginfo.gov/public/do/PRAMain>.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is provided in the following paragraphs.

As previously mentioned, NMFS expects that travel restrictions due to the COVID–19 pandemic will likely continue in American Samoa and foreign ports where observers are placed on purse seine vessels into the

foreseeable future. NMFS also expects that the AIDCP/IATTC will extend their observer exemptions procedures beyond the current March 31, 2022, expiration date. With the NMFS Emergency Rule that provides the United States domestic authority to waive observer coverage for large EPO purse seine vessels expiring on March 26, 2022, NMFS will no longer have the authority to issue exemptions from observer requirements to large purse seine vessels fishing in the or EPO after that date. This proposed rule will allow NMFS to continue issuing temporary exemptions from the observer requirements. The absence of this proposed rule would result in NMFS being unable to issue exemptions in cases where no observer is available, preventing U.S. large purse seine vessels from legally fishing, thereby decreasing fishing opportunities and putting the U.S. fleet at a competitive disadvantage.

The United States Small Business Administration (SBA) defines a “small business” (or “small entities”) as one with annual revenue that meets or is below an established size standard. NMFS has established that the small business size standard for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes (80 FR 81194, December 29, 2015), is \$11 million in annual gross receipts. The standard is to be used in place of the U.S. SBA standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors, respectively, of the U.S. commercial fishing industry.

The entities directly affected by the actions of this proposed action are U.S. large (*i.e.*, well volume greater than 425 cubic meters) tuna purse seine vessels that are required to carry fisheries observers, pursuant to the AIDCP and U.S. regulations at § 216.24(e). Per the \$11 million size standard, these purse seine vessels are both large and small businesses.

Estimates of ex-vessel revenues for large U.S. purse seine vessels fishing in the IATTC Convention Area before 2015 have been confidential and may not be publicly disclosed because of the small number of vessels in the fishery. However, beginning in 2015, more than three large purse seine vessels fished either exclusively in the EPO, or fished in both the EPO and WCPO. Thus, information from 2015 to 2020 is not confidential.

Ex-vessel price information specific to individual large U.S. purse seine vessels are not available to NMFS because these

vessels did not land on the U.S. West Coast and the cannery receipts are not available through the IATTC. However, Regional Purse Seine Logbook (RPL) data from NMFS Pacific Islands Fisheries Science Center (PIFSC), and observer data from the IATTC may be used as a proxy for fish landings by large U.S. purse seiners, in lieu of cannery receipts. Since neither gross receipts nor ex-vessel price information specific to individual fishing vessels are available to NMFS, NMFS applied indicative regional cannery prices—as approximations of ex-vessel prices—to annual catches of individual vessels obtained from RPLs and IATTC observer data, to estimate the vessels’ annual receipts. Indicative regional cannery prices are available through 2020 (developed by the Pacific Islands Forum Fisheries Agency; available at (<https://www.ffa.int/node/425>)). NMFS estimated vessels’ annual receipts during 2019–2020. Using this approach, NMFS estimates that among the affected vessels, the range in annual average receipts in 2019–2020 was \$400,000 to \$15 million with an average of approximately \$8 million. U.S. EPO purse seine vessels that carry observers in the IATTC Convention Area are both large and small entities. While vessels often fluctuate from year to year as being classified as a large or small entity, the majority of large U.S. purse seine vessels typically fall under the small entity category.

As of December 2021, there are 17 U.S. purse seine vessels on the IATTC active purse seine register that are expected to be impacted by this action. These vessels are large, size class 6 purse seine vessels, registered to fish in the IATTC Convention Area, and primarily based in the western and central Pacific Ocean (WCPO). They are subject to the 100 percent observer coverage requirement pursuant to the AIDCP and U.S. domestic regulations at § 216.24(e)(1).

As described in the previous section, even though NMFS would exempt the regulatory requirements in § 216.24(e) to carry an observer, if there are any tuna caught on a trip in the ETP, it would be ineligible for a U.S. dolphin-safe label or an AIDCP Dolphin-Safe Tuna Certificate if no observer was on board. However, such tuna harvested in the ETP without an observer may still be legally sold in the United States, provided it was harvested in accordance with other relevant requirements.

Despite these restrictions for use of the U.S. dolphin-safe label or an AIDCP Dolphin-Safe Tuna Certificate, some U.S. purse seine vessels have made determinations that there is still a

market for tuna caught without an observer. Out of the 87 trips by U.S. vessels that occurred since the observer exemptions were approved in March 2020, the United States has issued 17 observer exemptions under the authority of the NMFS Emergency Rule. Of those exemptions, approximately one third were not utilized, *i.e.*, no fishing occurred in the IATTC Convention Area during the trip for which the exemption was issued. For trips where no observer was deployed, vessels are required to submit directly to the IATTC an IATTC bridge log and a fish aggregating device (FAD) form that contains fields that would have otherwise been collected by the observer. The compliance rate with these requirements is 100 percent as of December 2021.

Lastly, beyond the aforementioned IATTC bridge log, FAD form, and NOAA Form 370 that are already collected for large purse seine trips, there are no new recordkeeping or reporting requirements associated with this action. There are also no relevant Federal rules that may duplicate, overlap, or conflict with this action.

This proposed action is not expected to substantially change the typical fishing practices of affected vessels or have a significant impact on the profitability of the affected U.S. vessels, as a relatively small number of U.S. vessels have been issued observer exemptions for trips under the NMFS Emergency Rule since March 2020. Though observer exemptions make catch of tuna in the EPO ineligible for U.S. dolphin safe label and AIDCP dolphin safe certificate, U.S. vessels and other IATTC members have found markets for catch without these labels/certificates and continue to request exemptions. The proposed action would allow U.S. large purse seine vessels to continue fishing activities in cases where it is not possible to place an observer. As such, this action is not expected to have a significant economic impact on a substantial number of small entities and will not have a disproportionate economic impact on small business entities relative to the large entities. Therefore, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

List of Subjects in 50 CFR Parts 216 and 300

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

Dated: January 28, 2022.

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

For the reasons set out in the preamble, the National Marine Fisheries Service proposes to amend 50 CFR parts 216 and 300 as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Subpart C—General Exceptions

■ 1. The authority citation for 50 CFR part 216, subpart C, continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Amend § 216.24(e)(1) by adding paragraphs (i) and (ii) to read as follows:

§ 216.24 Taking and related acts in commercial fishing operations including tuna purse seine vessels in the eastern tropical Pacific Ocean.

* * * * *

(e) * * *

(1) * * *

(i) *Exemption from observer requirement.* The Administrator, West Coast Region (or designee), may issue a temporary written exemption from the observer requirement in paragraph (e)(1) of this section if the Parties to the AIDCP and/or Members of the IATTC have adopted emergency observer exemption procedures to address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises. Such exemptions will be issued on a case-by-case basis for a single fishing trip, in accordance with the AIDCP/IATTC exemption procedures in effect at the time of the request. Exemptions from the requirement in paragraph (e)(1) of this section will only be issued when AIDCP/IATTC exemption procedures are in effect and are only valid for as long as the AIDCP/IATTC exemption procedures remain in effect. NMFS will notify the affected fleet via email when existing AIDCP/IATTC exemption procedures expire. NMFS will also notify the affected fleet via email and the public by publication of a notice in the **Federal Register** if new exemption procedures are adopted by the Parties to the AIDCP and/or the Members of the IATTC. Requests for exemption must be made to the Administrator, West Coast Region, via email at WCR.HMS@noaa.gov, or in a manner acceptable to the Administrator, West Coast Region.

(ii) [Reserved]

* * * * *

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

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

Authority: 16 U.S.C. 951 *et seq.*

■ 4. In § 300.24, revise paragraph (n) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(n) Use a fishing vessel of class size 4–6 to fish with purse seine gear in the Convention Area in contravention of the observer requirements in § 300.25(d) or the purse seine closure period requirements in § 300.25(e)(1), (2), or (5).

* * * * *

■ 5. In § 300.25, add paragraph (d) to read as follows:

§ 300.25 Fisheries management.

* * * * *

(d) *Observer requirements.*

(1) *Purse seine vessels.*

(i) The holder of an eastern tropical Pacific Ocean vessel permit, as required by § 216.24(b) of this title, must allow an observer duly authorized by the Administrator, West Coast Region, to accompany the vessel on all fishing trips in the IATTC Convention Area for the purpose of conducting research and observing operations, including collecting information that may be used in civil or criminal penalty proceedings, forfeiture actions, or permit sanctions, pursuant to the requirements in § 216.24(e) of this title. A vessel that fails to carry an observer in accordance with these requirements may not engage in fishing operations unless an exemption has been granted from these requirements as provided for in § 216.24(e)(1)(i) of this title.

(ii) [Reserved].

(2) [Reserved].

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 20131–0037]

RIN 0648–BK79

Pacific Island Fisheries; Rebuilding Plan for the American Samoa Bottomfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement a rebuilding plan that includes annual catch limits (ACL) and accountability measures (AM) for the overfished bottomfish stock complex in American Samoa. This action is necessary to end overfishing and rebuild the overfished stock consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: NMFS must receive comments by March 21, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0006, by either 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–2022–0006, in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. 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, address, etc.), 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).

The Western Pacific Fishery Management Council (Council) prepared Amendment 5 to the Fishery Ecosystem Plan for the American Samoa Archipelago (FEP), which includes a draft environmental assessment (EA) and Regulatory Impact Review. Copies of Amendment 5 and other supporting documents are available at www.regulations.gov, or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: Heather Cronin, NMFS PIR Sustainable Fisheries, 808–725–5179.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the American Samoa bottomfish fishery under the FEP and implementing regulations. The fishery primarily targets and harvests a complex of 11 bottomfish management unit species (BMUS), which includes emperors, snappers, groupers, and jacks. Bottomfish are typically harvested in deep waters, though some species are caught over reefs at shallower depths. Most (85 percent) bottomfish habitat is in territorial waters (generally from the shoreline to 3 nautical miles (5.6 km) offshore), with the rest in Federal waters (*i.e.*, the U.S Exclusive Economic Zone) around offshore banks. Fishing for bottomfish in American Samoa primarily occurs within 20 mi (32.2 km) from shore using aluminum catamarans less than 32 ft (9.7 m) long, known locally as *alia*.

The Council and NMFS only have the authority to develop and implement fishery management regulations in Federal waters, and the American Samoa Government has the authority to implement fishery management measures in territorial waters. Bottomfish fishermen in American Samoa are not required to obtain a Federal permit to fish for BMUS or to report their BMUS catch to NMFS. The American Samoa Department of Marine and Wildlife Resources collects fishery catch information from fishermen through voluntary creel surveys, and commercial sales data from the mandatory commercial receipt book program. There are no territorial permitting requirements to fish for bottomfish in territorial waters.

The fishery is relatively small, with fewer than 20 participants in the fishery (86 FR 3028, January 14, 2021), and primarily non-commercial, but it is still of importance to the local economy, and from social, cultural, and food security standpoints. In the past 20 years, the estimated total catch has varied from a high of 42,301 lb (19,187 kg) in 2001 to a low of 7,688 lb (3,487 kg) in 2012. The