REGULATORY IMPACT REVIEW FOR A PROPOSED RULE TO IMPLEMENT DECISIONS OF THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION:

TRANSSHIPPING, BUNKERING, REPORTING, AND PURSE SEINE DISCARD REQUIREMENTS

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1. INTRODUCTION

This document is a regulatory impact review (RIR) prepared under Executive Order 12866, "Regulatory Planning and Review." An initial regulatory flexibility analysis (IRFA) prepared under the Regulatory Flexibility Act is included in the proposed rule published in the Federal Register.

Executive Order 12866 requires that the economic impacts of proposed government regulations on the national economy be assessed before implementation. In most instances, the measurement of changes to gross domestic product is an accurate measure of impact. "In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory measures, including the alternative of not regulating" (EO 12866, Section 1). The emphasis of the analysis is on expected changes in net benefits that occur as a result of the proposed management measures. The government should choose only those sets of regulations that produce positive benefits while considering social and distributional effects. The National Marine Fisheries Service (NMFS)requires that this analysis be done through a regulatory impact review (RIR) for all regulatory actions that are of public interest. The RIR also includes analysis of distributive impacts and the costs of government administration and private compliance with the proposed measures. See the IRFA for further analysis of the expected economic effects on businesses, particularly small business entities.

This RIR is for a proposed regulatory action on the part of NMFS to implement decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). Those decisions require the members of the WCPFC, including the United States, to implement specific measures with respect to the conduct of their fishing vessels that operate in fisheries under the competence of the WCPFC. The rule would be issued under authority of the Western and Central Pacific Fisheries Convention Implementation Act (Public Law 109-479, Sec 501, *et seq*., codified at 16 U.S.C. § 6901 *et seq*.) (WCPFC Implementation Act).

2. OBJECTIVES

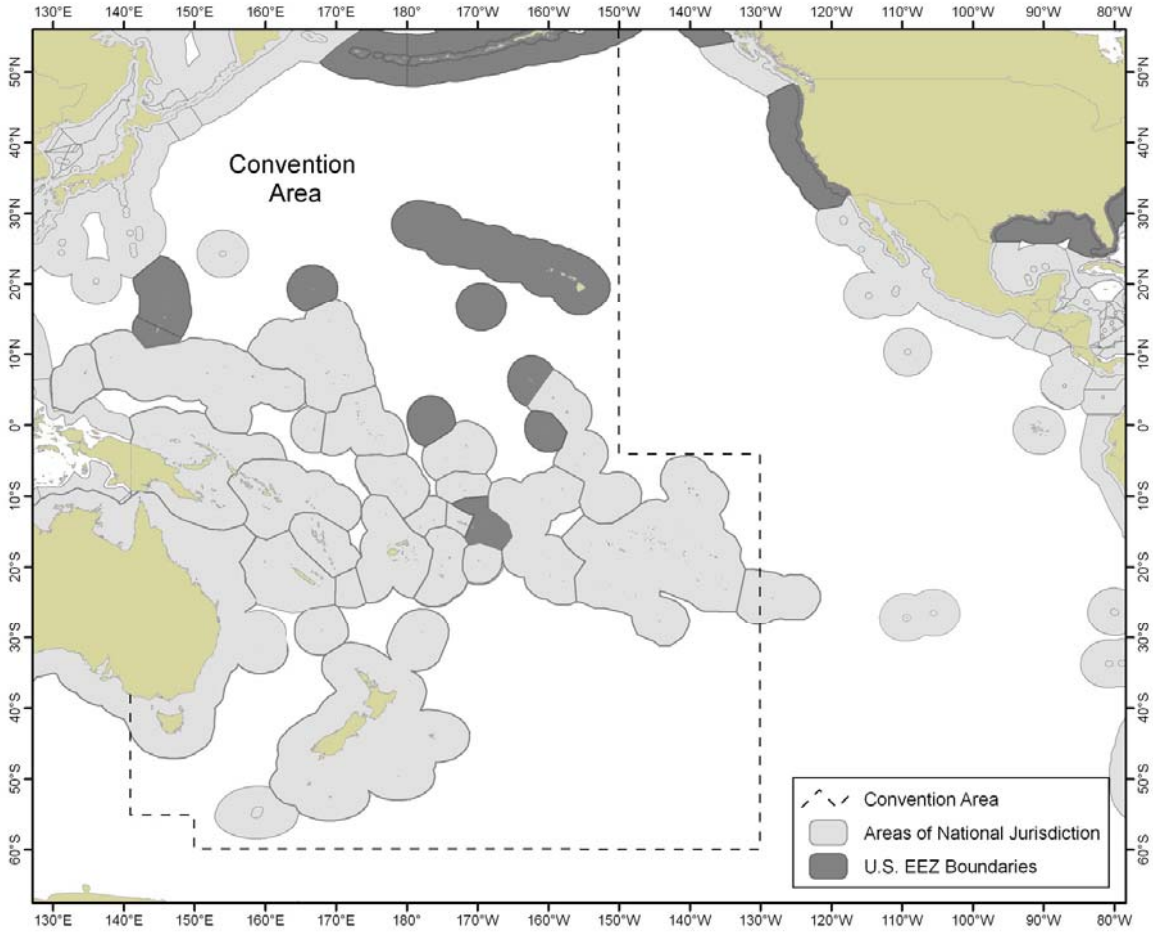
The objective of this proposed action is to satisfy the international obligations of the United States, as a Contracting Party to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), with respect to certain decisions of the WCPFC made at its Sixth Regular Annual Session, in Papeete, Tahiti, in December 2009, and its Seventh Regular Annual Session, in Honolulu, Hawaii, in December 2010, specifically elements of the following Conservation and Management Measures (CMMs):

- Conservation and Management Measure on the Regulation of Transhipment (CMM 2009-06);
- WCPFC Record of Fishing Vessels and Authorization to Fish (CMM 2009-01);
- Conservation and Management Measure on the Application of High Seas [Fish Aggregating Device] FAD Closure and Catch Retention" (CMM 2009-02); and
- Conservation and Management Measure for the Eastern High-Seas Pocket Special Management Area (CMM 2010-02).

The WCPFC Implementation Act authorizes the Secretary of Commerce (Secretary) to promulgate regulations that are needed to carry out the international obligations of the United States under the Convention and the Act, including the decisions of the WCPFC. The Secretary is directed to consult with the Secretary of State and the agency in which the U.S. Coast Guard is operating in promulgating regulations. The authority to promulgate regulations has been delegated to NMFS.

The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention) was opened for signature in Honolulu on September 5, 2000, and entered into force in June 2004. The full text of the Convention can be obtained from the Commission's website at: *http://www.wcpfc.int/convention.htm*. The area of application of the Convention ("the Convention Area") is shown in Figure 1. The Convention is focused on highly migratory species (HMS) and fish stocks within the Convention Area.

Figure 1. The Convention Area: High seas (in white); U.S. Exclusive Economic Zone (EEZ) (in dark gray); and foreign jurisdictions ("areas of national jurisdiction," in light gray)



Source: NMFS.

The WCPFC, established under the Convention, is comprised of the Contracting Parties to the

Convention and fishing entities that have agreed to be bound by the regime established by the Convention. Other entities that participate in the WCPFC include Participating Territories and Cooperating Non-Members. Cooperating Non-Members are admitted on a yearly basis. Members, Participating Territories, and Cooperating Non-Members are collectively referred to as "CCMs". The current Contracting Parties and Participating Territories to the Convention are: Australia, Canada, China, Cook Islands, European Community, Federated States of Micronesia, Fiji, France (extends to French Polynesia, New Caledonia and Wallis and Futuna), Japan, Kiribati, Korea, Marshall Islands, Nauru, New Zealand (extends to Tokelau), Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Tonga, Tuvalu, United States (extends to the Territory of American Samoa, the Commonwealth of the Northern Mariana Islands and the Territory of Guam) and Vanuatu. Chinese Taipei (Taiwan), as a fishing entity, has agreed to be bound by the regime established by the Convention.

The Convention was ratified by, and came into force for, the United States in 2007. The United States thereby became a full Member of the WCPFC after having been a Cooperating Non-Member since the WCPFC's establishment in 2004.

3. DESCRIPTION OF AFFECTED FISHERIES

The proposed rule would affect U.S. HMS fishing vessels that operate in the Convention Area, and certain requirements would extend to the activities of such vessels outside the Convention Area that involve HMS caught in the Convention Area. The affected fleets and the fisheries they engage in are described in the environmental assessment (NMFS 2011) prepared for this proposed rule. Described there are the characteristics and fishing practices of the affected fleets, the relevant elements of the current management regime, and the recent performance of the affected fisheries. The environmental assessment is incorporated here by reference.

4. PROBLEM STATEMENT

CMM 2009-06 is premised on the recognition that unregulated and unreported transshipment of catches of HMS at sea contributes to inaccurate reporting of the catches of such stocks, and supports illegal, unregulated, and unreported fishing activities. The CMM, which builds on Article 29 of the Convention, includes specific obligations for WCPFC members to regulate transshipment of HMS in the Convention Area. Among the objectives of the CMM is to establish procedures to obtain and verify data on the quantity and species transshipped in the Convention Area to ensure accurate reporting of catches, so that stock assessments of HMS include improved data. The term transshipment as specified in the Convention means the unloading of all or any of the fish on board a fishing vessel to another fishing vessel either at sea or in port. The CMM applies to the following: (1) transshipments in the Convention Area of all HMS covered by the Convention; and (2) transshipments outside the Convention Area of HMS covered by the Convention where the HMS were harvested in the Convention Area. The CMM does not apply to transshipments of HMS where fish is taken and transshipped wholly in archipelagic waters or territorial seas.

The CMM includes provisions calling for CCMs to do the following: (1) require operators of vessels that offload or receive transshipments, at sea or in port, to complete a transshipment report, including specific information detailing the transshipment and the products transshipped; if the transshipment takes place on the high seas or is an emergency transshipment that would otherwise be prohibited, the transshipment report must be submitted to the WCPFC within 15 days of the transshipment; (2) require that a notice be submitted to the WCPFC containing specific information in the case of an emergency transshipment that would otherwise be prohibited within 12 hours of the completion of the transshipment by means of a device that can both send and receive data (e.g., fax or email); (3) require that a notice be submitted to the WCPFC containing specific information 36 hours prior to each transshipment on the high seas in the Convention Area or of fish caught in the Convention Area and transshipped on the high seas elsewhere by means of a device that can both send and receive data (e.g., fax or email); (4) require that observers be carried on vessels to monitor transshipments in the Convention Area; and (5) prohibit vessels from transshipping to or from a vessel flagged to a non-CCM unless that vessel has received authorization from the WCPFC, such as being listed on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels or has been specifically licensed to fish in the EEZ of a CCM in accordance with a decision of the WCPFC.

Under the Convention, CCMs are obligated with limited exceptions to prohibit transshipments at sea involving purse seine vessels in the Convention Area. NMFS has implemented this prohibition (see 50 CFR 300.216(b)). This rulemaking would implement the provision of CMM 2009-06 that requires CCMs to prohibit transshipments at sea involving purse seine vessels of fish caught in the Convention Area but transshipped outside of the Convention Area. The proposed rule would not prohibit purse seine vessels from continuing to transship in port.

CMM 2009-06 contains a provision obligating CCMs to prohibit vessels (other than purse seine vessels) flying their flags from transshipping on the high seas in the Convention Area, subject to certain considerations. That provision is not within the scope of the proposed rule considered in this RIR. NMFS is preparing an advance notice of proposed rulemaking regarding this provision of CMM 2009-06 to address the transshipment prohibition and any applicable exceptions.

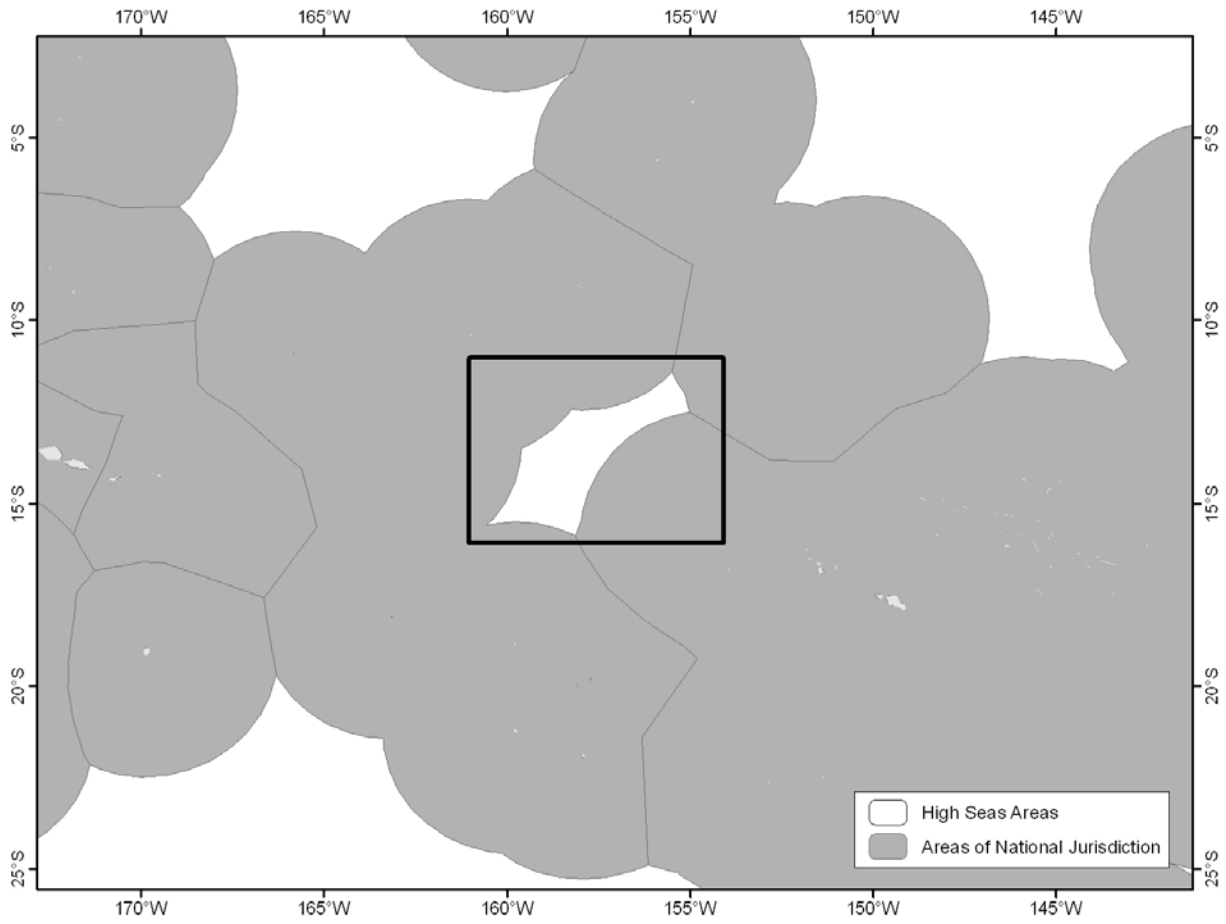
CMM 2009-01 revised CMM 2004-01, and specifically established an “Interim Register of non-Member Carrier and Bunker Vessels” (Interim Register). The CMM includes a specific provision obligating WCPFC Members and Cooperating Non-Members to prohibit their fishing vessels from conducting transshipments and bunkering in the Convention Area with another vessel unless that vessel is: (1) flagged to WCPFC Members or Cooperating Non-Members; (2) not flagged to WCPFC Members or Cooperating Non-Members but on the Interim Register; or (3) operated under charter, lease, or similar mechanisms as an integral part of the fishery of a CCM, in accordance with relevant WCPFC provisions. This provision is similar to the provision in CMM 2009-06 obligating CCMs to prohibit vessels from transshipping to or from a vessel flagged to a non-CCM unless that vessel has received authorization from the WCPFC.

The provisions in CMM 2009-02 modify or supplement the provisions in CMM 2008-01, “Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean,” for FAD prohibition periods and catch retention requirements for purse seine fishing vessels, including specific requirements for reporting discards of fish. Prior to the

adoption of CMM 2009-02, NMFS issued regulations implementing the requirements for the FAD prohibition periods and catch retention specified in CMM 2008-01. Those regulations are set forth at 50 CFR 300.223. NMFS has determined that existing regulations implementing the FAD prohibition periods and catch retention requirements under CMM 2008-01 are consistent with the related provisions of CMM 2009-02. Therefore, no additional steps need to be taken at this time to implement these provisions, except that NMFS proposes to remove the termination date (December 31, 2012) applicable to the existing catch retention provision. In addition, CMM 2009-02 also contains new reporting requirements for discards of fish from purse seine vessels which would be implemented under this rulemaking.

CMM 2010-02 seeks to reduce illegal, unreported, and unregulated (IUU) fishing and applies to the area of the high seas bounded by the EEZs of the Cook Islands to the north and west, French Polynesia to the east and Kiribati to the northeast. The measure obligates CCMs to require their vessels to submit reports with specific information, including catch data, at least six hours prior to entry and no later than six hours prior to exiting this area of the high seas. The map in Figure 2 shows the Eastern High Seas Special Management Area (Eastern SMA) as the high seas area within the rectangle.

Figure 2. Eastern SMA: Areas of high seas are indicated in white; areas of claimed national jurisdiction, including territorial seas, archipelagic waters, and exclusive economic zones, are indicated in dark shading. The Eastern SMA is the high seas area (in white) within the rectangle bounded by the bold black lines. This map displays indicative maritime boundaries only.



Source: NMFS.

The purpose of the proposed rule is for NMFS: to implement, with respect to fishing vessels of the United States engaged in commercial fishing, certain provisions of CMM 2009-06 and CMM 2009-01 for the regulation of transshipping and bunkering in the Convention Area in order to support efforts for the accurate reporting of catches and to curb IUU fishing activities; to implement, with respect to U.S. purse seine fishing vessels, the discard reporting requirements specified in CMM 2009-02 and associated restrictions on net sharing activities; and to implement the provisions of CMM 2010-02 to combat IUU fishing in the Eastern SMA. The proposed rule is needed to satisfy the international obligations of the United States as a Contracting Party to the Convention, pursuant to the authority of the WCPFC Implementation Act.

5. ALTERNATIVES

The proposed rule would implement provisions of CMMs 2009-06, 2009-01, 2009-02, and 2010-02. The provisions can be grouped into the following seven categories:

1. Transshipment reporting requirements

2. Prior notice for high seas transshipments and notice of emergency transshipments
3. Observer coverage for transshipments at sea
4. Categories of vessels with which transshipping and bunkering may be conducted
5. Requirements regarding notification of entry into or exit from Eastern SMA
6. Requirements regarding discards from purse seine fishing vessels
7. Net sharing restrictions and reporting requirements

Below is a description of each of these categories of provisions and alternative means of implementing each provision. Following that description, the alternative means are combined to form three specific action alternatives.[1]

Category 1: Transshipment reporting requirements

CMM 2009-06 obligates WCPFC members to require operators of vessels that offload or receive transshipments of HMS to complete a transshipment report, including specific information detailing the transshipment and the products transshipped. The specific information that must be included in the transshipment report, as detailed in Annex I of CMM 2009-06 includes:

1. A unique document identifier
2. The name of the offloading vessel and its WCPFC Identification Number
3. The name of the receiving vessel and its WCPFC Identification Number
4. The fishing gear used to take the fish
5. The quantity of product (tuna and tuna-like species, i.e., target species), including species and its processed state, to be transshipped (processed state means the following: whole, gutted and headed; gutted, headed, and tailed; gutted only, not gilled; gilled and gutted; gilled, gutted, and tailed
6. The state of the fish (fresh or frozen)
7. The quantity of by-product (non tuna and tuna-like species, i.e., non-target species)
8. The geographic location of the catches of HMS to be transshipped, meaning sufficient information to identify what proportion of the catch was taken in the following areas: high seas, outside the WCPFC Convention Area, or within an EEZ (listed separately)
9. The date and location of the transshipment in decimal latitude and longitude to the nearest 0.1 degrees and accompanied by a description of the location, such as high seas, outside the Convention Area, or within a named EEZ
10. If applicable, the name and signature of the WCPFC observer
11. The quantity of product already on board the receiving vessel and the geographic origin of the product, meaning the quantity of product from each regional fisheries management organization (RFMO) area.

The transshipment report must be completed by vessel owners and operators who transship at sea or in port in the Convention Area, or conduct transshipments anywhere of HMS caught in the Convention Area, unless the fish is caught and transshipped entirely in archipelagic waters or territorial seas. NMFS is preparing a transshipment report form that would include the information requirements specified in Annex I of CMM 2009-06, as well as all existing domestic

[1] The three action alternatives considered here correspond to three of the action alternatives considered in the environmental assessment for this action (NMFS 2011), labeled Alternatives B, C and D in both documents.

transshipment reporting requirements (i.e., existing requirements established under fishery ecosystem or management plans prepared under authority of the Magnuson-Stevens Fishery Conservation and Management Act). This form would also be used to fulfill the transshipment reporting requirements specified by the Inter-American Tropical Tuna Commission in Resolution C-11-09, "Resolution (Amended) on Establishing a Program for Transhipments by Large-Scale Fishing Vessels," which NMFS is implementing in a separate rule. This form is intended to replace some, but not all, of the current U.S. transshipment logsheet forms.

According to CMM 2009-06, if the transshipment takes place on the high seas or if the transshipment is an emergency transshipment, the transshipment report must be submitted to the Executive Director of the WCPFC within 15 days of the transshipment. However, CMM 2009-06 does not specify when the information needs to be submitted to the flag State for other transshipments, leaving it to the flag State to determine. Existing domestic longline regulations require submission of transshipment logs to the NMFS Pacific Islands Regional Administrator within 72 hours of landing for vessels subject to the requirements of 50 CFR Part 665 (50 CFR 665.14(c)), submission of transshipment logs to the NMFS Southwest Regional Administrator within 30 days of transshipment for vessels registered for use under a west coast HMS permit (i.e., albacore troll vessels (50 CFR 660.708(a))), and within fourteen days of completion of the transshipment to the Pacific Islands Forum Fisheries Agency (FFA) for purse seine vessels licensed under the regulations implementing the Treaty with a copy to NMFS within two days of completion of the transshipment (50 CFR 300.34(c)(2)). For vessel owners and operators subject to existing requirements, the proposed rule would require the transshipment report to be submitted to the same addresses where the transshipment logs are currently submitted. NMFS has identified a range of alternatives for the timing of the form's submittal, as described below. NMFS would need copies of all of the forms for data collection and management purposes and only some of the forms (those involving high seas or emergency transshipments) need be submitted to the WCPFC, therefore vessel owners and operators would submit the form to NMFS in all instances and NMFS would forward the form to the WCPFC as appropriate. Vessel owners and operators would never submit their forms directly to the WCPFC.

One alternative would require the form to be submitted to NMFS at a specified time for emergency transshipments and transshipments that take place on the high seas and at another specified time for all other transshipments that take place in areas other than the high seas. This would allow the proposed rule to incorporate the provision of CMM 2009-06 requiring that the information in the transshipment report be submitted to the WCPFC's Executive Director within 15 days of emergency transshipments and transshipments that take place on the high seas and to more closely match existing requirements for transshipments that take place in other areas. Thus, the alternative considered here would require the form to be submitted to NMFS no later than 10 calendar days after completion of emergency transshipments or transshipments on the high seas. This would allow NMFS time to process and submit the forms to the WCPFC within the 15-day deadline. For other transshipments (i.e., those for which the transshipment reports do not need to be submitted to the WCPFC), the timeframes would be as follows: for purse seine vessels licensed under the regulations implementing the Treaty, the original forms would need to be submitted to NMFS as specified for submission of the original forms to the FFA at 50 CFR 300.34 (currently, within 14 days of completion of the transshipment); for albacore troll vessels, registered for use under 50 CFR 660.707, the form would need to be submitted to NMFS as

specified at 50 CFR 660.708 (currently, within 30 days of completion of the transshipment); for longline vessels subject to the transshipment reporting requirements in 50 CFR Part 665, the form would need to be submitted as specified in those regulations (currently, within 72 hours of landing); for all other transshipments at sea, this alternative would require the form to be submitted within 72 hours of first entering into port; and for all other transshipments in port, this alternative would require the form to be submitted within 72 hours of completion of the transshipment.

A second alternative would institute a uniform timeframe for the submission of all forms, regardless of the area where the transshipment takes place and regardless of the type of vessels involved in the transshipment. Under this alternative, all forms would be required to be submitted to NMFS no later than 10 calendar days after completion of the transshipment. Because the form would replace current transshipment logsheet forms under existing requirements, those existing requirements would need to be amended to incorporate the new uniform timeframe. Thus, this alternative could not be implemented fully as part of the Proposed Action, which is limited to implementing certain provisions of CMM 2009-06, CMM 2009-01, CMM 2009-02, and CMM 2010-02, pursuant to the authority of the WCPFC Implementation Act. However, given that this alternative fulfills the purpose of, and need for, the Proposed Action, and is reasonable, this alternative is considered in this RIR.

Category 2: Prior Notice for High Seas Transshipment or Emergency Transshipments

CMM 2009-06 specifies that the WCPFC Executive Director must be sent notice 36 hours prior to high seas transshipments. For emergency transshipments, that would otherwise be prohibited, the CMM specifies that notice of the transshipment and the circumstances causing the transshipment must be sent to the WCPFC Executive Director within 12 hours of the completion of the transshipment. The notices must be provided to the Executive Director by means of a device that can both send and receive data (i.e., fax or email). The notices must include the following information: (1) the name and WCPFC Identification Number of the offloading vessel; (2) the name and WCPFC Identification Number of the receiving vessel; (3) the product (including species and its processed state) to be transshipped, or in the case of emergency transshipments, the product that has been transshipped; (4) the tonnage, by product, to be transshipped, or in the case of emergency transshipments, the product that has been transshipped; (5) the date and estimated or proposed location of transshipment (in decimal latitude and longitude to the nearest 0.1 degrees and accompanied by a description of the location, such as high seas or within a named EEZ); and (6) the geographic location of the HMS catches for the offloading vessels, meaning sufficient information to identify what proportion of the catch was taken while on the high seas inside or outside the Convention Area, or within a particular EEZ. High seas transshipments must take place within 24 nautical miles of the location information provided in the notice.

Due to the short amount of time for providing the notice to the WCPFC Executive Director in the case of emergency transshipments (12 hours after completion), NMFS believes that requiring vessel owners and operators to provide the notice directly to the WCPFC with a copy to NMFS is the only reasonable and feasible alternative for implementing this particular provision.

For transshipments on the high seas, NMFS identified three alternatives for implementing the prior notice requirement provision. One alternative would be essentially the same as the alternative for implementing the notice of emergency transshipments, requiring vessel owners and operators to submit the notice directly to the WCPFC with a copy to NMFS by the required deadline (36 hours prior to the transshipment taking place). This alternative is considered in detail in this RIR.

Another alternative would require vessel owners and operators to submit the notice to NMFS, in which case NMFS would take the responsibility of submitting the notice to the WCPFC at least 36 hours prior to the transshipment taking place. This alternative would require that the notice be submitted to NMFS with sufficient time for NMFS to submit the notice to the WCPFC by the due date – that is, at least one U.S. Federal business day before the 36-hour deadline, or at least 60 hours before the transshipment, with the time calculated in Hawaii Standard Time. The WCPFC Secretariat is accustomed to receiving communications from Member States, not individual vessel owners and operators, so this alternative would be in keeping with that practice. However, this alternative may not be feasible for all transshipments on the high seas, as some vessel owners and operators may not be able to provide all of the information required in the notice so far in advance of the transshipment. Thus, this alternative has been excluded from detailed consideration in this RIR.

A third alternative would give vessel owners and operators the option of either submitting the notice to NMFS at least one business day plus 36 hours in advance of the transshipment (i.e., 60 hours before the transshipment), with the time calculated in Hawaii Standard Time, or, if unable to obtain the required information so far in advance, submitting the notice directly to the WCPFC at least 36 hours in advance of the transshipment. Thus, this alternative would attempt to maintain the current practice of having NMFS provide the WCPFC with the information submission, rather than having individual vessel owners and operators submit information to the WCPFC, but also would allow vessel owners and operators the flexibility of submitting information directly to the WCPFC if they are unable to meet the deadline for submitting the information to NMFS. This alternative is considered in detail in this RIR.

Category 3: Observer Coverage for Transshipments at Sea

NMFS identified one alternative for implementing the at-sea observer coverage provisions of CMM 2009-06. This alternative would require vessels to carry observers for transshipments that occur at sea in the Convention Area. The specific requirements would vary slightly based on the vessel size and type of fish being transshipped. They are as follows:

- For transshipments to receiving vessels less than or equal to 33 meters in length, and not involving purse seine-caught fish or frozen longline-caught fish, an observer would be required on either the offloading vessel or the receiving vessel.

- For transshipments to U.S. receiving vessels greater than 33 meters in length and involving only troll-caught or pole-and-line-caught fish, an observer would be required on the receiving vessel (unlike the other requirements, this would not be put into effect until January 1, 2013).

- For transshipments to U.S. receiving vessels greater than 33 meters in length and not involving troll-caught or pole-and-line-caught fish, an observer would be required on the receiving vessel.

- For transshipments to U.S. receiving vessels less than or equal to 33 meters in length, and involving purse seine-caught fish or frozen longline-caught fish, an observer would be required on the receiving vessel.

Vessel owners or operators would be required to ensure that an observer is present before beginning transshipment, even when not required to carry an observer (e.g., the operator of a longline vessel offloading to a receiving vessel greater than 33 meters in length would be required to ensure that an observer is present on the receiving vessel).

To facilitate the placement of observers, vessel owners/operators would be required to notify NMFS of the need of an observer at least 72 hours in advance of the start of a fishing trip. This timing is consistent with existing observer-related notification requirements.

Category 4: Categories of Vessels with which Transshipping and Bunkering May Be Conducted

NMFS identified one alternative for implementing the provisions of CMM 2009-06 and CMM 2009-01 regarding the categories of vessels with which transshipments to and from and bunkering to and from may be conducted. This alternative would require the owner and operator of any U.S. fishing vessel used to fish for HMS to ensure that any vessel with which they: (1) engage in transshipment (to or from) in the Convention Area; (2) engage in bunkering (to or from) in the Convention Area or (3) exchange supplies in the Convention Area falls into certain categories. The vessels must be: (1) flagged by a WCPFC Member or Cooperating Non-Member; (2) on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels, which is available at *http://www.wcpfc.int/*; or (3) on the WCPFC Record of Fishing Vessels, which is available at *http://www.wcpfc.int/*.

Category 5: Requirements Regarding Notification of Entry into or Exit from Eastern SMA

NMFS identified one alternative for implementing the entry and exit notification provisions of CMM 2010-02. The owner and operator of any U.S. commercial fishing vessel would be required to submit a notice to the WCPFC containing specific information at least six hours prior to entry and no later than six hour prior to exiting the Eastern SMA. The notices would be required to be submitted in the format specified by the Pacific Island Regional Administrator via fax or email and would include the following information: (1) vessel identification; (2) entry or exit; (3) date and time (in UTC) of anticipated point of entry or exit; (4) latitude and longitude of anticipated point of entry or exit; (5) amount of fish product on board at the time of the report, in kilograms, in total and for each of the following species or species groups: yellowfin tuna, bigeye tuna, albacore, skipjack tuna, swordfish, shark, and other; and (6) an indication of whether the vessel has engaged in or will engage in any transshipments prior to exiting the Eastern SMA. A copy of the notice would be required to be submitted to NMFS.

Category 6: Requirements Regarding Discards from Purse Seine Fishing Vessels

Prior to the adoption of CMM 2009-02, NMFS issued regulations implementing the requirements for the FAD prohibition periods and catch retention specified in CMM 2008-01. Those regulations are set forth at 50 CFR 300.223 and are effective through 2012. NMFS has determined that existing regulations implementing the FAD prohibition periods and catch retention requirements under CMM 2008-01 are consistent with the related provisions of CMM 2009-02. Therefore, no additional steps need to be taken at this time to implement the FAD prohibition periods, except that NMFS proposes to remove the termination date (December 31, 2012) applicable to the existing catch retention provision. In addition, CMM 2009-02 also contains new reporting requirements for discards of fish from purse seine vessels which would be implemented under this rulemaking.

Due to the short timeframe for submitting the discard report to the WCPFC Executive Director (48 hours after any discard), NMFS believes that requiring vessel owners and operators to provide the discard report directly to the WCPFC with a copy to NMFS is the only reasonable and feasible means for implementing this particular provision. Thus, NMFS identified one alternative for the reporting requirements regarding discards from purse seine fishing vessels. The owner and operator of any U.S. purse seine fishing vessel would be required to submit a report to the WCPFC containing specific information no later than 48 hours after any discard of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacores*), or skipjack tuna (*Katsuwonus pelamis*) – the species required to be retained under the existing catch retention requirements – caught in the Convention Area. The reports would be required to be submitted in the format specified by the Pacific Islands Regional Administrator via fax or email. A copy of the report would be required to be submitted to NMFS as well as to the observer on board the vessel.

Category 7: Net sharing restrictions and reporting requirements

The existing catch retention requirements at 50 CFR 300.223(d) require U.S. purse seine fishing vessels to retain all catch of bigeye tuna, yellowfin tuna, and skipjack tuna in the Convention Area unless: (1) the fish are unfit for human consumption; (2) there is insufficient well space to accommodate all the fish captured in a given set, provided that no additional sets are made during the trip; or (3) if serious malfunction of equipment occurs. In the event that a vessel has insufficient well space to accommodate all the fish caught in a set, NMFS believes that the vessel operators and crew should be allowed to transfer the excess fish in the net to another vessel rather than having to release them. This is consistent with CMM 2008-01, which states that "excess fish taken in the last set may be transferred to and retained on board another purse seine vessel provided this is not prohibited under applicable national law." However, existing regulations at 50 CFR 300.216 prohibit purse seine vessels from conducting transshipments at sea in the Convention Area. Thus, the proposed rule would exclude net sharing activities from the definition of transshipment, but would limit net sharing to the final set of a trip. Specifically, the proposed rule would prohibit net sharing except when no additional purse seine sets are made from the fishing vessel from which the fish are transferred during the remainder of the fishing trip and the vessel has insufficient well space for the fish. NMFS identified the following three alternatives for implementation of this provision of the proposed rule: (1) Net sharing would be restricted to between U.S. purse seine vessels; (2) U.S. vessels would be allowed to transfer fish

to both U.S. and foreign purse seine vessels, but could only accept fish via net sharing from a U.S. vessel; and (3) U.S. purse seine vessels would be allowed to transfer fish to both U.S. and foreign vessels, and could accept fish from both U.S. and foreign purse seine vessels.

The first two alternatives are analyzed in depth in this RIR. Because NMFS has limited authority to enforce a last-set requirement on foreign vessels, the third alternative has been excluded from detailed consideration in this RIR.

5.1. Alternative A (no action)

Under this alternative, the applicable provisions of CMM 2009-06, CMM 2009-01, CMM 2009-02, and CMM 2010-02 would not be implemented for fishing vessels of the United States engaged in commercial fishing activities in the Convention Area. The transshipment reporting requirements, notices for high seas and emergency transshipments, observer requirements for transshipments at sea, restrictions on vessels with which transshipping and bunkering may be conducted, any prohibitions on high seas transshipments for vessels other than purse seine vessels, entry and exit notifications for the Eastern SMA, and requirements regarding discards from purse seine fishing vessels would not be put into place.

5.2. Alternative B (proposed rule): Different Timeframes for Submission of the Transshipment Report; Direct notice to the WCPFC

Under this alternative, for the provisions of Category 1, vessel owners and operators would be required to submit the transshipment report to NMFS no later than 10 calendar days after completion of an emergency transshipment, a transshipment of HMS on the high seas in the Convention Area, or a transshipment on the high seas anywhere of HMS caught in the Convention Area. For other transshipments, the timeframes would mirror applicable existing requirements. For purse seine vessels licensed under the regulations implementing the Treaty on Fisheries between the Governments of certain Pacific Islands States and the Government of the United States of America (SPTT or Treaty), the forms would need to be submitted to NMFS within 14 days of completion of the in-port transshipment; for albacore troll vessels registered for use under 50 CFR 660.707, the form would need to be submitted to NMFS within 30 days of the transshipment; for longline vessels subject to the transshipment reporting requirements in 50 CFR Part 665, the form would need to be submitted within 72 hours of landing. For transshipments at sea where there are no existing transshipment reporting requirements (e.g., longline vessels not subject to the transshipment reporting requirements in 50 CFR Part 665, pole and line vessels), this alternative would require the form to be submitted within 72 hours after the vessel whose owner and operator is responsible for completing the form first enters into port. For transshipments in port where there are no existing transshipment reporting requirements, this alternative would require the form to be submitted within 72 hours after completion of the transshipment.

The provisions of Category 2 under this alternative would require vessel owners and operators to provide prior notice for high seas transshipments and emergency transshipments directly to the WCPFC with a copy to NMFS within the appropriate deadlines.

This alternative also would require observer coverage for transshipments at sea, require pre-trip notifications for observer placement, and define the categories of vessels with which transshipping and bunkering could be conducted. Under Alternative B, vessel owners and operators of U.S. commercial fishing vessel would be required to submit notice to the WCPFC at least six hours prior to entry to or exit from the Eastern SMA and submit a copy of the notice to NMFS as well. U.S. purse seine fishing vessels would be required to comply with the discard reporting requirements described for Category 6, above. Net sharing would be restricted to the last set of a trip and would be allowed only with other U.S. purse seine vessels, and the activity would have to be recorded on catch report forms (also known as RPLs).

5.3. Alternative C: Uniform timeframe for submission of the transshipment report; choice of providing notice to either WCPFC or NMFS

Alternative C would be the same as Alternative B except in two respects. First, under this alternative, *for all transshipments*, vessel owners and operators would be required to submit the transshipment report to NMFS no later than 10 calendar days after completion of the transshipment. Second, vessel owners and operators would have the option of either submitting the notice of high seas transshipment to NMFS at least one business day plus 36 hours in advance of the transshipment (i.e., 60 hours before the transshipment), or, if unable to obtain the required information so far in advance, submitting the notice directly to the WCPFC Executive Director at least 36 hours in advance of the transshipment, with a copy to NMFS.

5.4. Alternative D: Net sharing with foreign-flagged vessels

Alternative D would be the same as Alternative B for the majority of the provisions to be implemented under the proposed rule. However, under this alternative, net sharing would be allowed to occur with foreign vessels as well as with U.S. vessels (but as in Alternative B, it would be allowed only on the last set of a trip).

6. ANALYSIS OF ALTERNATIVES

Four types of economic effects are analyzed: changes in net benefits, distributional changes in net benefits, changes in income and employment, and cumulative effects. The expected effects of the proposed action (Alternative B) are first described in detail, followed by a comparative description of the expected effects of Alternatives C and D.

6.1. Changes in net benefits

Analytical approach:

The emphasis of the RIR is on identifying changes in revenues as a proxy (in the absence of detailed and up-to-date cost data) for changes in net benefits. For the purpose of estimating future benefits and costs, U.S. government guidance for benefit-cost analysis (OMB 1992; OMB 2003) calls for the use of an annual discount rate of seven percent for a base-case analysis, and to apply alternative rates, including three percent, for the purpose of sensitivity analyses. The discount rate is applied to the expected stream of net benefits over a time horizon of 25 years (the

selection of a 25-year time horizon indicates a far-sighted analysis: at a 7% discount rate, for example, a 25-year time horizon is similar to much longer time horizons, since by year 25 a given benefit or cost has been discounted to a near-zero value).

The analysis is limited to examining changes in net benefits to U.S. gross domestic product; changes in net benefits that occur to foreign interests are not relevant in the context of this RIR. Changes in benefits and costs in both the private and public sectors are important with respect to net benefits; effects in both sectors are accounted for in this analysis to the extent possible. In the private sector, benefits may accrue as surpluses to consumers and producers. In the case of fish harvesting operations, producer surplus is reflected in the difference between gross revenues and operating costs. Expected changes in benefits and costs are quantified where possible, but in some instances only qualitative projections can be made.

Benefits of the proposed action:

The proposed action consists of what can mostly be characterized as monitoring, control and surveillance (MCS) tools. They are the notice and reporting requirements of Categories 1, 2, 5, and 6, the observer requirements of Category 3, the limits on the types of vessels with which U.S. vessels may transship and bunker of Category 4, and the restrictions on net sharing of Category 6.

The proposed requirements are expected to yield improved compliance with various measures and more thorough and reliable information on: (1) transshipments of HMS from and to U.S. vessels; (2) the transit of HMS fishing vessels into and out of the Eastern SMA; (3) tuna discards from purse seine vessels; and (4) catches from purse seine vessels (by more rigorously accounting for catches transferred between purse seine vessels via net sharing). This information in itself will not provide any benefits, but it could be, and presumably will be, used by the WCPFC and its members to better understand these activities, to deter illegal activity, and to inform future management of HMS fisheries in the Convention Area, which could lead to, for example, more optimal statuses of target stocks and related resources than would occur under the no-action alternative. The benefits of these potential outcomes, which could accrue to producers and/or consumers, cannot be quantified.

To gauge the net benefits of the proposed action, the (unquantifiable) benefits identified above would have to be weighed against the costs of the proposed action. Those costs are estimated to the extent possible in the paragraphs that follow, specifically in terms of consumer surplus, producer surplus, and public sector costs.

Consumer surplus:

None of the action alternatives are expected to affect prices of fishery products consumed by U.S. consumers, and no effects on consumer surplus are expected. This is primarily because the producers in the fisheries affected by this action are largely price-takers (they participate in a global market for tuna products in which they and other U.S. producers play relatively small parts), and secondarily because the action is expected to have little or no effect on the productivity of tuna resources (and thus it would not affect the supply or prices of tuna products

in the global market).

Producer surplus:

Producer surplus is the difference between producers' (e.g., fishing businesses') revenues and their costs.

The proposed rule would apply to owners and operators of U.S. HMS fishing vessels used to: (1) transship HMS in the Convention Area or to transship outside the Convention Area HMS caught in the Convention Area; (2) enter or exit the eastern high seas pocket; or (3) purse seine for HMS in the Convention Area. Such vessels would include longline, purse seine, and troll vessels. Based on the number of longline vessels permitted to fish under the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region or the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species as of January 2011, the number of affected longline vessels is about 170. Based on the number of purse seine vessels licensed under the South Pacific Tuna Treaty as of January 2011, the number of affected purse seine vessels is about 36. Based on the average annual number of albacore troll vessels that fished in the Convention Area during 2002-2009, the number of affected troll vessels is about 26. Another type of vessel that could be affected is support vessels, such as carriers or bunkers that receive transshipments of HMS from other vessels. The number of U.S. support vessels currently active in the WCPFC Area is believed to be zero. Although such vessels could become active in the future, it assumed for the purpose of this analysis that none would. Thus, the total number of vessels that would be subject to the proposed rule is about 232.

The proposed rule would bring direct costs to affected fishing businesses, primarily through the notification and reporting requirements, including labor and communication costs. Certain elements of the proposed rule would also restrict particular activities, which could bring indirect costs (or conceivably, benefits) to affected fishing businesses. These expected direct and indirect costs are described below for each of the proposed rule's seven categories of requirements. In order to estimate the direct compliance costs under the proposed rule, the expected levels of relevant fishing activities (i.e., transshipping, entering and exiting the Eastern SMA, discarding tuna from purse seine vessels, and purse seine net sharing) are first presented.

Transshipment activity:

Based on transshipment activity during 1993-2009 (NMFS unpublished data), the longline fleet is expected to transship about 12 times per year, on average, and involve only U.S. vessels. Each transshipment would trigger the transshipment reporting requirement for two vessels, the offloading vessel and the receiving vessel (triggering 24 transshipment reports per year). For the purpose of this analysis, it is presumed that all longline transshipments would take place on the high seas (triggering the pre-transshipment notice requirement for both vessels in each case and the pre-trip notification requirement to request an observer for one of the two vessels in each case). The requirement to carry an observer for some of those transshipments would be satisfied under existing requirements (because under existing requirements observers are deployed on a portion of longline trips). For the Hawaii longline fleet, for example, 100 percent of shallow-set trips are observed and about 20 percent of deep-set trips are observed. However, vessel operators

might not know in advance of a given trip whether they will want to transship at sea during that trip. Consequently, to ensure they have an observer in the event they find themselves wanting to transship, they might choose to request and carry an observer on a trip that ultimately does not involve a transshipment. It is not possible to predict how vessel operators will behave in this respect. For the purpose of this analysis, it is assumed that the number of observer requests for longline vessels would be equal to the number of longline transshipments (12 per year). Furthermore, it is assumed that observers would be deployed pursuant to the proposed rule (versus pursuant to existing observer requirements) on 75% of the expected total of 12 longline trips per year, for a total of 9 trips per year, all American Samoa or Hawaii deep-setting trips. Based on deep-set fishing trip lengths by the Hawaii longline fleet during 2009 and 2010 (NMFS unpublished data), each affected fishing trip is expected to be about 24 days in duration, on average.

Based on transshipment activity during 2008 and 2009 (NMFS unpublished data), the purse seine fleet is expected to transship 259 times per year, on average. Transshipments are generally required to take place at port, but under the proposed rule transshipments would be allowed at sea in specified emergency circumstances. It is presumed that 5 such at-sea emergency transshipments will take place each year (in which cases the pre-transshipment notice requirement would apply). The observer requirements would not apply in any case, both because in the case of transshipments involving purse-seine-caught fish, it is the receiving vessel that is required to carry the observer, and because transshipments from purse seine vessels would be allowed at sea only in emergency situations.

Based on transshipment activity during 1990-2009 (NMFS unpublished data) the troll fleet is expected to transship 39 times per year, on average (each case triggering the transshipment reporting requirement). Because virtually all historical at-sea transshipments are believed to have occurred on the high seas, it is presumed that the same number of transshipments – 39 per year – will take place on the high seas (triggering the pre-transshipment notice requirement). The observer requirements would be expected to apply to few, if any, of those cases because in most cases of transshipments involving troll-caught or pole-and-line-caught fish, it is the receiving vessel that would be required to carry the observer. If a U.S. troll vessel were used to receive a transshipment, then the requirements to notify NMFS in advance of the trip and to carry an observer would apply to the troll vessel, and if the receiving vessel were less than or equal to 33 meters in length, the required observer could be carried by either the offloading or receiving vessel. However, based on the history of the fishery, in which all recorded transshipments have been made to large foreign-flagged carriers, these cases are expected to be rare, and for the purpose of the quantitative analysis that follows, it is assumed they will not occur.

Eastern SMA activity:

During 2005-2009, an average of three U.S. longline vessels entered and exited the Eastern SMA each year, but it is not known how many times any given vessel did so (NMFS unpublished data). For the purpose of this analysis, it is estimated that U.S. longline vessels will enter the Eastern SMA three times each year, and exit the area the same number of times (each of the six entries/exits triggering the reporting requirement).

In 2010, there was almost no presence of U.S. purse seine vessels in the Eastern SMA, but the fleet has the potential to be active in that area, so for the purpose of this analysis it is assumed that two entries and two exits will be made each year by purse seine vessels.

The traditional fishing grounds of the albacore troll fleet are far from the Eastern SMA, but the possibility of such vessels entering the area exists, so for the purpose of this analysis it is assumed that two entries and two exits will be made each year by albacore troll vessels.

Purse seine discard activity:

Based on the number of tuna discard events per vessel in the U.S. WCPO purse seine fleet during 2008 (17; NMFS unpublished data), the last year for which complete data are available, it is expected that discard events will occur about 612 times per year (36 vessels times 17 discards per vessel-year), on average, under the proposed rule (each event triggering the discard reporting requirement).[2]

Purse seine net sharing activity:

Information on net sharing activity in the U.S. purse seine fleet has not been collected to date, so it is not possible to estimate how often it occurred in the past or predict how frequently it would occur under the proposed rule. Net sharing would generally be expected to occur when there is insufficient well space to accommodate the entire catch from a set and there is another, cooperating, purse seine vessel in the vicinity of the catcher vessel.

(1) Transshipment reporting requirement:

It is estimated that each transshipment report would require about 60 minutes of labor and $1 in communication costs. The value of the required labor is estimated to be $60 per hour. The estimated cost of compliance is therefore about $61 per report. Given the expected number of transshipments for each fleet as described above, the annual compliance costs are expected to be about $1,464, $15,799, and $2,379 for the longline, purse seine, and albacore troll fleets, respectively, for a total of about $19,642.

It is unlikely that these direct compliance costs would be great enough to affect the fishing patterns or practices of any individual fishing business or of any fleet as a whole, so no additional indirect costs (or benefits) to producers would be expected.

(2) Prior notice for high seas transshipments and emergency transshipments:

It is estimated that each transshipment notice would require about 15 minutes of labor and no

[2] The data from 2008 are not ideal indicators of future discard activity because the act of discarding tuna from purse seine vessels in the Convention Area has since been restricted. The projection made here is therefore likely to be an over-projection. Starting June 14, 2010, discards of bigeye tuna, yellowfin tuna, or skipjack tuna are allowed only if the fish are unfit for human consumption, there is insufficient well space to accommodate all the fish captured in the final set of a fishing trip, or if a serious equipment malfunction occurs that necessitates that fish be discarded (50 CFR 300.223(d)). Discard data for the period since this regulatory change are not yet available, so the 2008 data are used.

more than $1 in communication costs. The value of the required labor is estimated to be $60 per hour. The estimated cost of compliance is therefore about $16 per notice. Given the expected number of high seas and emergency transshipments for each fleet as described above, the annual compliance costs are expected to be about $384, $80, and $624 for the longline, purse seine, and albacore troll fleets, respectively, for a total of about $1,088.

It is unlikely that these direct compliance costs would be great enough to affect the fishing patterns or practices of any individual fishing business or of any fleet as a whole, so no additional indirect costs (or benefits) to producers would be expected.

(3) Observer coverage for transshipments at sea:

Pre-trip notification requirement: It is estimated that each pre-trip notification would require 1 minute of labor and about $1 in communication costs. The value of the required labor is estimated to be $60 per hour. The estimated cost of compliance is therefore about $2 per notification. Given the expected transshipment (and observer-requesting) activity for each fleet as described above, the annual compliance costs are expected to be about $24, $0, and $0 for the longline, purse seine, and albacore troll fleets, respectively, for a total of about $24.

Requirement to carry observer: For those trips on which an observer would be deployed under this new requirement, the affected entity would be responsible for the costs associated with providing the observer with food, accommodations, and medical facilities. This would not be the case for longline trips on which an observer is deployed under existing requirements at 50 CFR 665.808 (which would, incidentally, satisfy the observer requirements under this rule). Under 50 CFR 665.808(i)(1), the vessel owner in that case would be eligible for reimbursement of the costs of observer subsistence in a reasonable amount, as determined by the NMFS Pacific Islands Regional Administrator. For example, if the operator of a longline vessel requests an observer because of an intent to transship at sea on a given trip, but NMFS then deploys an observer on the vessel pursuant to its sampling scheme pursuant to regulations at 50 CFR 665.808, the vessel owner would be eligible for reimbursement for costs to cover observer subsistence. But if NMFS' sample scheme does not result in deployment of an observer under 50 CFR 665.808 and NMFS instead deploys the observer solely pursuant to this new requirement, then the vessel owner would not be eligible for any reimbursement. It is difficult to predict the number or proportion of fishing trips that would be eligible for reimbursement because the observer coverage rates under 50 CFR 665.808 vary among fleets and can change over time. For the purpose of this analysis, it is assumed that one fourth of longline trips with observers on board to observer transshipments under this rule would be eligible for reimbursement, and that such reimbursement will fully cover the costs of providing observers with food, accommodations, and medical facilities.

For those trips not eligible for reimbursement, the costs borne by vessel operators to provide observers with food, accommodations, and medical facilities is expected to be about $20 per day (the rate typically and recently reimbursed by NMFS for observer subsistence costs under 50 CFR 665.808(i)(1)). Given the expected transshipment (and observer-requesting) activity for each fleet as described above, and the average longline trip length as described above, the annual compliance costs are expected to be about $4,320, $0, and $0 for the longline, purse seine, and

albacore troll fleets, respectively, for a total of about $4,320.

In addition to the direct costs identified above, owners and operators of vessels that engage in at-sea transshipments would be responsible for ensuring that an observer is present, even when the requirement to carry an observer falls on the other vessel involved in the transshipment. In the event that the other vessel fails to have the required observer on board, some vessel operators might choose to forego the desired transshipment. This situation would be largely limited to vessels in the American Samoa longline fleet and deep-setting vessels in the Hawaii longline fleet for the reasons described above. In such cases, the vessel operator might search for another vessel to transship with, return to port earlier than they otherwise would have, return to a different port than they otherwise would have, or ultimately land fish of lower quality and value than would have been the case if they had transshipped the fish. All these situations would bring costs to the fishing business in the form of lost revenues or increased operating costs.

There may also be situations – again, probably only in the American Samoa longline fleet and the deep-set sector of the Hawaii longline fishery – where a vessel operator desires to offload or receive a transshipment but does not have the required observer on board because he or she did not anticipate the need/desire to transship during the trip. Similarly, a vessel operator might intentionally choose not to request an observer and to forego transshipping at sea in order to avoid carrying on observer. As for the previously described situation, the fishing business would bear costs from not being allowed to transship during that trip (but the latter situation would indicate that the costs of not being able to transship are less than the costs of requesting and carrying an observer). Expressed more generally, having to decide in advance of any given trip whether to request an observer would be burdensome and bring indirect costs associated with the risk of making the “wrong” decision.

The frequency of the two situations identified above cannot be predicted. Nor can the associated costs to fishing businesses. But given the relatively low frequency of at-sea transshipments expected in the longline fishery (approximately 12 per year), these indirect costs as a whole are expected to be minor. It should be noted that in the extreme case that a transshipment is conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage, the transshipment would be allowed without an observer present, so no indirect costs would result.

(4) Restrictions on vessels with which transshipments and bunkering may be conducted:

These restrictions would prohibit transshipping or bunkering with vessels that are not flagged or chartered by a CCM and not on the WCPFC’s Interim Register of non-CCM Carrier and Bunker Vessels (a temporary register of non-CCM flagged carrier and bunkers). The Interim Register is due to be phased out in early 2013, at which point the WCPFC expects that the majority of carrier and bunker vessels on it will be flagged to WCPFC Members or Cooperating Non-Members. It is expected that virtually all the vessels with which U.S. HMS vessels would want to conduct transshipping and bunkering would fall in the permissible categories of vessels. Thus, this requirement is not expected to be constraining. No effects on fishing patterns or practices would be expected, and affected fishing businesses would be expected to bear little, if any, costs.

(5) Notice of entry or exit for eastern high seas pocket:

It is estimated that each notice would require about 15 minutes of labor and no more than $1 in communication costs. The value of the required labor is estimated to be $60 per hour. Given the expected Eastern SMA activity for each fleet as described above, the annual compliance costs are expected to be about $96, $64, and $64 for the longline, purse seine, and albacore troll fleets, respectively, for a total of about $224.

It is unlikely that these direct compliance costs would be great enough to affect the fishing patterns or practices of any individual fishing business or of any fleet as a whole, so no additional indirect costs (or benefits) to producers would be expected.

(6) Requirements regarding discards from purse seine vessels:

It is estimated that each discard report would require about 30 minutes of labor and no more than $1 in communication costs. The value of the required labor is estimated to be $60 per hour. The estimated cost of compliance is therefore about $31 per report. Given the expected discard activity for the purse seine fleet as described above, the annual compliance costs are expected to be about $18,972.

Removing the termination date of the existing catch retention requirements would bring an extension of the costs to purse seine fishing operations associated with having to fill well space with less valuable, and in some cases, unmarketable, product. Those costs cannot be quantified.

It is unlikely that these direct compliance costs would be great enough to affect the fishing patterns or practices of any individual fishing business or of any fleet as a whole, so no additional indirect costs (or benefits) to producers would be expected.

(7) Net sharing restrictions and reporting requirements:

This requirement would not impose any new reporting or recordkeeping requirements but it would modify the information required to be reported on the catch report forms (also known as RPLs) required to be maintained at 50 CFR 300.34(c)(1). The proposed requirement to indicate on catch report forms that, for that set, a specified amount of fish were shared with a specified other vessel is not expected to add to the existing reporting burden or bring other compliance costs.

The proposed requirement to limit net sharing to the final set of a trip not expected to bring substantial costs to fishing operations because the main motivation for net sharing is to avoid discarding fish that cannot be accommodated in fish wells that are full. In other words, vessel operators generally want to net-share only on the last set, when it would be allowed. Nonetheless, vessel operators might occasionally want to net-share on other sets, such as when they are having problems with the freezing equipment, and the prohibition against doing so would bring costs. However, in such cases, transshipment would be allowed, which would mitigate the costs of not being able to net-share.

The proposal to allow net sharing only with U.S. purse seine vessels would be constraining and therefore bring costs. Neither the frequency of net sharing generally nor the frequency of net sharing with foreign vessels is known, so the magnitude of those costs cannot be predicted. In any case, because net sharing is expected to be a relatively rare activity, those costs are not expected to be substantial.

Overall:

The total direct, quantifiable costs to fishing businesses of the six categories of requirements under the proposed rule would be approximately $6,288, $34,915, $3,067 for the longline, purse seine, and albacore troll fleets, respectively, for a total of about $44,270. Additional but minor indirect costs can be expected from the observer requirements and net sharing restrictions.

Public sector costs:

Implementation of the proposed rule would result in federal government costs in several areas.

The administrative costs borne by NMFS to produce, disseminate, receive, and process the various notifications and reports required under the proposed action are expected to be about $5,252 per year. These include: (1) the costs of producing and disseminating the transshipment reporting and discard reporting forms (934 forms per year, at $0.12 per form, for $112 per year), and (2) receiving and processing completed transshipment reports (322 per year), pre-transshipment notices (68 per year), observer requests (12 per year), Eastern SMA entry/exit reports (14 per year), and purse seine discard reports (612 per year) (1,028 responses per year, at 15 minutes per response and labor costs of $20 per hour, for $5,140 per year). These administrative costs include the initial storage of the information – and in the case of an observer request, its use in deploying an observer – but not any further data management or analysis. Those tasks and associated costs are beyond the scope of the proposed action.

The deployment by NMFS of observers (on 75% of 12 longline trips per year, averaging 24 days in length) is expected to cost about $500 per observer-day, for a total of about $108,000 per year. This includes all the costs of deploying observers, including their compensation and training, as well as the costs of verifying the collected data and storing them. It does not include the costs of subsequent data management or analysis, which are beyond the scope of the proposed action.

The NOAA Office of Law Enforcement is expected to bear about $160,000 per year in costs to enforce this proposed rule. This includes the labor costs for on-the-ground enforcement activities, such as monitoring vessels at ports, and for reviewing documents and interview witnesses and suspects ($130,000), and the travel costs for enforcement agents to travel as necessary to conduct such document reviews and interviews ($30,000). Additional costs are expected to be incurred by NOAA to prosecute alleged violations of the proposed rule, but projecting such costs would be very speculative and is not attempted here.

Overall, the public sector costs to implement this proposed rule are expected to be about $273,252 per year, plus costs to prosecute alleged violations, which cannot be projected.

Summary of effects on net benefits:

As described above, the benefits of the proposed action would be in the form of improved compliance with various measures, and more thorough and reliable information on transshipment activity, vessel movements in the Eastern SMA, and discards from purse seine vessels, which could be used to help inform management of HMS fisheries in the Convention Area. These benefits cannot be quantified.

The costs of the proposed action are expected to include approximately $44,270 per year in direct costs to fishing businesses (plus some undetermined amount of indirect costs associated with the observer requirements and net sharing restrictions), and approximately $273,252 per year in implementation costs to the federal government (plus some undetermined amount of prosecutorial costs). At a seven percent annual discount rate and over a 25-year time horizon, and assuming these costs remain the same over this time horizon, the present value of the quantifiable portion of these expected costs is about $3.7 million. At an annual discount rate of three percent, the present value of the expected costs would be about $5.5 million.

Because of the difficulty in quantifying the benefits of the proposed action, it is not possible to determine whether they would outweigh its costs.

Comparisons among alternatives:

Taking no action would bring no benefits and none of the direct or indirect costs identified above for the proposed action.

The benefits of Alternative C (uniform timeframe for submission of the transshipment report; choice of providing notice to either WCPFC or NMFS) would likely be the same as those of the proposed action, as the same information would be collected and made available to the same parties for the same purposes. The costs of Alternative C would likely be slightly different than those of the proposed action. The uniform timeframe aspect of this alternative would be more restrictive and therefore more burdensome to certain types of fishing businesses than the proposed rule. The flexibility in being able to send the notice of high seas or emergency transshipment to either NMFS or the WCPFC Secretariat would be less restrictive and therefore less burdensome to fishing businesses than the proposed rule. However, in the case that a notice is sent to NMFS, NMFS would have to forward it to the WCPFC Secretariat within one business day, which would bring greater administrative costs to NMFS. It cannot be determined which of the two alternatives would have greater net benefits, but the difference would be minor.

The benefits of Alternative D (allowing net sharing with foreign vessels) would be roughly the same as those of the proposed action, as mostly the same information would be collected and made available to the same parties for the same purposes. But Alternative D would make it more difficult to ensure consistent counting of catches – for example, the shared catch might be logged as catch by both the U.S. catcher vessel and the foreign vessel with which the catch is shared. The utility and value of the information collected in catch reports would therefore be slightly less under Alternative D than under the proposed action. The private sector costs of Alternative D

would be slightly less than under the proposed action, because purse seine vessel operators would not be constrained to net sharing only with U.S. vessels. It cannot be determined which of the two alternatives would have greater net benefits, but the difference would be minor.

6.2. Distributional changes in net benefits

Examples of distributional effects include differential economic impacts according to geographical region and businesses of differing sizes.

The proposed action would apply to any U.S. fishing vessel used to fish for HMS (where "fish for" includes not just harvesting but transshipping and bunkering activities) in the Convention Area or to transship outside the Convention Area HMS that were caught in the Convention Area. These vessels are mostly based in, and operate out of, Hawaii (longline vessels), American Samoa (longline and purse seine vessels), and the U.S. west coast (troll vessels). Much of the purse seine fleet operates without any particular home ports. The requirements would apply equally to all such vessels, but because of the differing regulatory and operational circumstances of the various fleets, different fleets – and thus different geographical regions – could bear differing economic impacts. The purse seine fleet, for example, is prohibited from transshipping at sea, so it would bear essentially no impact from the elements of the proposed rule that pertain to transshipping at sea. Because the economic impacts of the proposed rule are expected to be minor, any distributional differences in those impacts would also be minor.

There are also correlations between fleet type and the sizes of affected business entities – businesses in the purse seine fishery tend to be larger than those in the longline and troll fisheries. As described above, because the different fleets have different regulatory and operational circumstances, they could bear differing economic impacts, and thus the impacts could tend to differ according to the size of the affected businesses. But again, any such distributional differences are expected to be minor.

Within the purse seine fleet, the costs associated with removing the termination date of the existing catch retention requirement would likely be different for vessels that tend to operate out of Pago Pago and deliver their catch to the canneries in Pago Pago versus vessels that transship most of their catch to other vessels. For vessels in the former category, which have to steam relatively far from the fishing grounds in order to land their fish, a fishing trip typically only ends when the fish holds are full in order to maximize revenue during a given trip. Revenues and profits for these vessels are therefore strongly dependent on the size of their fish wells and on the value of fish per unit of well space. There have been occasions when the canneries have charged vessel operators to unload small fish. If that occurs with small fish that under this proposed rule are retained that otherwise would not be, vessel owners and operators would bear direct economic costs. For vessels that tend to transship their catches at ports near the fishing grounds, well space is a less important constraint on profits, so the economic impacts of this requirement on these vessels would likely be less.

The requirements of the proposed rule do not differ according to vessel size, with the exception of the observer requirements, which provide that if the receiving vessel is no more than 33 meters in length and the transshipment does not involve purse seine-caught or frozen longline-caught fish, the observer may be deployed on either vessel. In all other cases, the observer must be deployed on the receiving vessel. Strictly speaking, receiving vessels no more than 33 meters

in length would bear less burden than those longer than 33 meters, but in practice no differential impacts are expected because no vessels in the latter category are active in the fishery. Thus, no distributional impacts in terms of vessel size would be expected.

All of the action alternatives would be similar in terms of distributional effects.

6.3. Changes in income and employment

As described in section 6.1, the proposed action (Alternative B) and Alternatives C and D would bring direct costs to fishing businesses, but it is unlikely that those direct compliance costs would be great enough to affect the fishing patterns or practices of any individual fishing business or of any fleet as a whole, or to affect productivity. Prices are also not expected to be affected. Consequently, no effects in terms of income or employment would be expected from any of the action alternatives.

6.4. Cumulative effects

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

Benefits:

As described in section 6.1, the proposed requirements are expected to yield improved compliance with various measures and more thorough and reliable information on transshipment activity, the transit of HMS fishing vessels into and out of the Eastern SMA, and tuna discards from purse seine vessels. That information would add to existing sources of information on these and related activities, and therefore add to the benefits derived from the previous actions that generated existing sources of information. The information generated by this proposed action could be used by the WCPFC and its members to better understand these and related fishing activities, and lead to the future adoption and implementation of measures to deter illegal activity and to better manage HMS fisheries in the Convention Area. Such future management decisions could lead to, for example, more optimal statuses of target stocks and related resources than would otherwise occur, and consequently greater benefits that accrue from those resources. Thus, the cumulative benefits of this proposed action are greater than the benefits of the proposed action alone.

Costs:

The costs to fishing businesses from this proposed rule, as well as the implementation costs borne by the federal government, would be added to the costs of previous management actions, such as those stemming from the various existing permitting and reporting requirements and fishing restrictions currently in place. Future management actions might lead to additional costs on affected fishing businesses and in the public sector, but the nature of those actions and their costs cannot be predicted. Thus, the cumulative costs of this proposed action are greater than the costs of the proposed action alone.

Net benefits:

As described above, neither the cumulative benefits nor cumulative costs of the proposed rule can be estimated quantitatively. It is consequently not possible to determine whether the cumulative benefits to the United States would outweigh the cumulative costs.
Comparison among alternatives:

The present and potential future management actions would be expected in association with any of the action alternatives, so the cumulative effects of the three action alternatives would be different only insofar as their direct and indirect effects are different, as described in the previous sections.

7. DETERMINATION OF SIGNIFICANCE UNDER EXECUTIVE ORDER 12866

In accordance with E.O. 12866, NMFS has made the following determinations:

- This rule is not likely to have an annual effect on the economy of more than $100 million or to adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.
- This rule is not likely to create any serious inconsistencies or otherwise interfere with any action taken or planned by another agency.
- This rule is not likely to materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights or obligations of recipients thereof.
- This rule is not likely to raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Based on these determinations, the rule considered in this RIR is not a "significant regulatory action" for the purposes of E.O. 12866. Furthermore, the rule is not controversial.

8. REFERENCES

NMFS (National Marine Fisheries Service). 2011. Environmental Assessment for a Proposed Rule: Transshipping and Bunkering Requirements, Requirements for Notification of Entry into and Exit from High Seas Special Management Area, Requirements for Discards from Purse Seine Vessels and Related Requirements. Honolulu: National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Pacific Islands Regional Office. Available at: *http://www.fpir.noaa.gov/IFD/ifd_documents_data.html*

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