NOAA FISHERIES
Pacific Islands Regional Office

Compliance Guide

Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2013-2014

May 2013

This guide provides information on how owners and operators of U.S. purse seine vessels can comply with specific fishing restrictions and observer requirements when operating in the western and central Pacific Ocean (WCPO). The National Marine Fisheries Service (NMFS) has issued regulations to implement a decision of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The area of application of the WCPFC (or Convention Area) comprises the majority of the WCPO. The regulations include limits on fishing effort in the U.S. exclusive economic zone (EEZ) and on the high seas, restrictions on the use of fish aggregating devices (FADs), and requirements for U.S. purse seine vessels to carry observers, all for 2013 and 2014. The final regulations were published in the *Federal Register* on May 23, 2013, and will be included in the Code of Federal Regulations at 50 CFR Part 300, Subpart O. These regulations are similar to regulations that were in effect from 2009 through 2012.

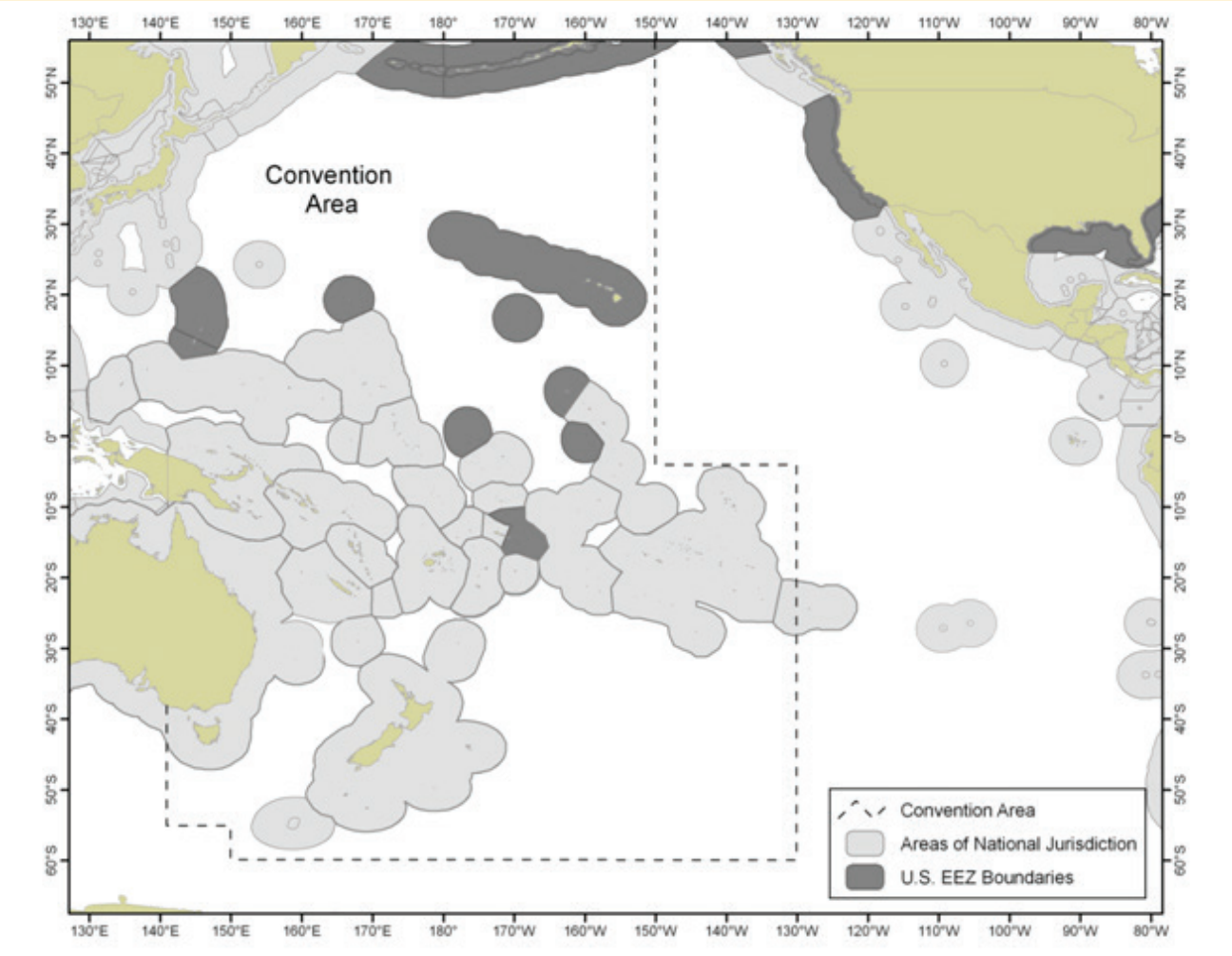
Any discrepancy between the contents of this guide and regulations will be resolved in favor of regulations published in the *Federal Register* and codified in the *Code of Federal Regulations*. This compliance guide is a "small entity compliance guide" issued in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996: Title II of Public Law 104-121.

Compliance Guide

Area of Effect

The requirements described in this guide apply to the Convention Area between 20° N. and 20° S. latitude. Figure 1 depicts the Convention Area.

Figure 1. The Convention Area: high seas (white); U.S. Exclusive Economic Zone (dark gray); and foreign claimed maritime jurisdictions (light gray).



Explanations of Regulations

The regulations described in this guide fall into the following three categories:

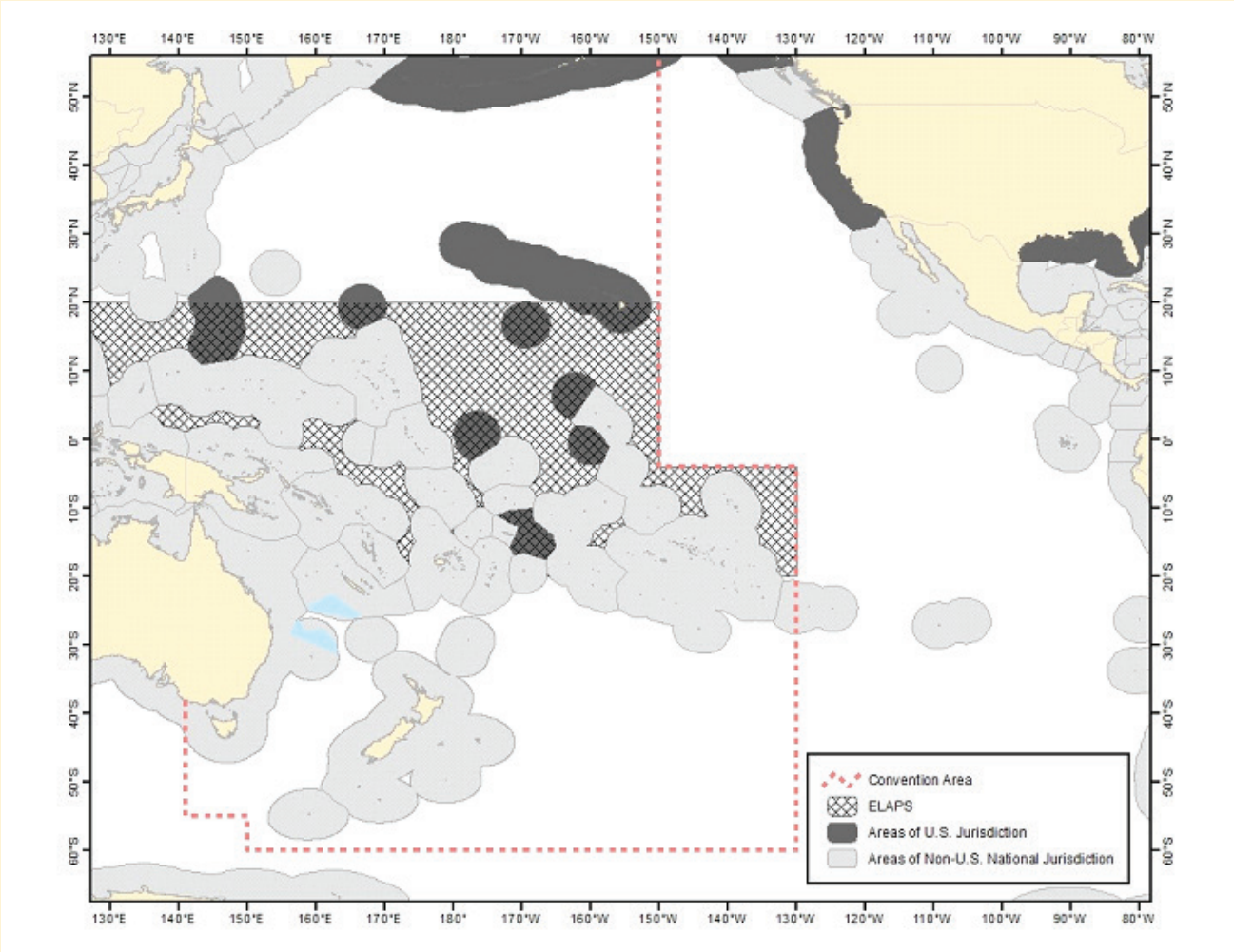
1. Fishing effort limits
2. Restrictions on the use of FADs
3. Observer requirements

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

Category #1 Fishing Effort Limits

The limit on the total number of days that U.S. purse seine vessels are allowed to fish in the Convention Area, within the area between 20° N. and 20° S. latitude on the high seas and in the U.S. EEZ (an area called the ELAPS or Effort Limit Area for Purse Seine), in each of the calendar years 2013 and 2014, is **2,588 fishing days**. Figure 2, below, shows the ELAPS.

Figure 2. ELAPS. The ELAPS does not include territorial seas or archipelagic waters.



Key Questions and Answers

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

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

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

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

Question 3: When do fishing days start being counted against the limit – in other words, when does the "limit period" start? And when does it end?

Answer: The limit period for each of 2013 and 2014 begins at the start of the calendar year and ends at the end of the calendar year. For example, the limit period for 2013 begins at 00:00 on January 1, 2013, Universal Coordinated Time (UTC), and ends at 24:00 on December 31, 2013, UTC.

Question 4: How will I know when the limit in 2013 or the limit in 2014 is reached?

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

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

Answer: Starting on the first day of the fishery closure, as announced in the *Federal Register* notice, fishing vessels of the United States equipped with purse seine gear may not be used to fish on the high seas or in the U.S. EEZ in the Convention Area between 20° N. and 20° S. latitude (i.e., in the ELAPS). This prohibition will be in effect through the end of the calendar year.

Category #2 Restrictions on the Use of FADs

From 00:00 on July 1 through 24:00 on October 31, UTC ("FAD prohibition period"), in each of 2013 and 2014, U.S. purse seine vessel owners, operators, and crew are prohibited from doing the following in the Convention Area between 20° N. and 20° S. latitude:

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

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

Deploying a FAD into the water.

Repairing, cleaning, maintaining, or otherwise servicing a FAD, including any electronic equipment used in association with a FAD, in the water, or on a vessel while at sea (see Question 3 below for exceptions).

Submerging lights under water from a purse seine vessel or any associated skiffs, other watercraft or equipment (see Question 5 below for exceptions).

Suspending or hanging lights over the side of the purse seine vessel, skiff, watercraft or equipment (see Question 5 below for exceptions).

Directing or using lights in a manner other than the following: to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment; to comply with navigational requirements; or to ensure the health and safety of the crew (see Question 5 below for exceptions).

Key Questions and Answers

Question 1: What exactly is a FAD?

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

Question 2: What is meant by "setting a purse seine in a manner intended to capture fish that have aggregated in association with a FAD or a vessel," which is prohibited during the FAD prohibition period?

Answer: Examples of such prohibited activities include:

- Setting a purse seine in an area from which a FAD or a vessel has been moved or removed within the previous eight hours.
- Setting a purse seine in an area in which a FAD has been inspected or handled in the previous eight hours.
- Setting a purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD or a vessel.

Question 3: Is it ever permissible to repair, maintain or otherwise service a FAD during a FAD prohibition period?

Answer: Yes, during a FAD prohibition period, FADs and associated electronic equipment may be inspected and handled as needed to identify the FAD, identify and release incidentally captured animals, un-foul fishing gear, or prevent damage to property or risk to human safety.

Question 4: Can we retrieve a FAD during a FAD prohibition period?

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

Question 5: Is it ever permissible to submerge, hang, or use lights during a FAD prohibition period?

Answer: Yes, you may use lights during a FAD prohibition period in emergencies as needed to ensure the health and safety of the crew and in emergency situations to prevent human injury or the loss of human life, the loss of the purse seine vessel, skiffs, watercraft or aircraft, or environmental damage. And, as stated above, you may direct or use lights as needed to illuminate the deck of the purse seine vessel or associated skiffs, watercraft or equipment to comply with navigational requirements and to ensure the health and safety of the crew.

Category #3 Observer Requirements

The following are the observer coverage requirements for a fishing vessel of the United States that is equipped with purse seine gear:

Until 24:00 UTC on December 31, 2014, a U.S. fishing vessel may not be used to fish with purse seine gear in the Convention Area without a WCPFC observer on board.

Question 1: What is a WCPFC observer?

Answer: A WCPFC observer means a person authorized by the WCPFC in accordance with any procedures established by the WCPFC to undertake vessel observer duties as part of the WCPFC's Regional Observer Programme (ROP). As of the writing of this compliance guide, such observers include any observer deployed as part of a NMFS-administered observer program, and any observer deployed as part of the observer program administered by the Pacific Islands Forum Fisheries Agency (FFA).

Question 2: Is this observer requirement in addition to the observer requirement under the South Pacific Tuna Treaty (SPTT)? How are the two requirements related?

Answer: Because FFA-deployed observers are currently authorized as WCPFC observers, carrying an FFA-deployed observer on your vessel will satisfy both this requirement and the observer requirement under the South Pacific Tuna Treaty.

Question 3: Do I still need to have a WCPFC observer on board if my fishing trip is limited to areas within the U.S. EEZ?

Answer: Yes. You must have a WCPFC observer on board even if your fishing trip is limited to areas within the U.S. EEZ. This requirement differs from the observer requirements that were in place in 2009-2012.

Question 4: Are there any exceptions to the observer requirements? Do I need to carry a WCPFC observer on all fishing trips?

Answer: Generally, you need to carry a WCPFC observer on all fishing trips. However, if your trip takes place entirely outside of the area of application of this requirement (i.e., outside the area between 20° N. and 20° S. latitude within the Convention Area) you do not need to carry a WCPFC observer. Also, if your fishing trip takes place entirely within areas under the jurisdiction of only one foreign nation, you do not need to carry a WCPFC observer under these regulations, but it is likely that you will be required by the foreign nation to carry an observer.

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

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

Question 6: Must I carry a WCPFC observer if I am merely transiting, and not fishing?

Answer: No – this requirement only applies to trips during which any fishing takes place. If you are going to transit and you do not want to carry an observer, you are advised (but not required under these regulations) to notify the NMFS American Samoa Field Office and the FFA in advance of the trip. You are also advised to keep your fishing gear stowed during the entire trip. You are *required* to keep your fishing gear stowed when on the high seas without a valid WCPFC Area Endorsement, in an area under the jurisdiction of a foreign nation without an authorization by that nation to fish in that area, or in an area designated as a Closed Area under the SPTT regulations, pursuant to the regulations at 50 CFR 300.221(c) and 50 CFR 300.36.

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