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Small Entity Compliance Guide

Fishing Restrictions for Vessels Targeting Highly Migratory Species in the Inter-American Tropical Tuna Commission Convention Area

November 2011

The National Marine Fisheries Service (NMFS) has issued regulations under the authority of the Tuna Conventions Act of 1950 for the U.S. vessels targeting highly migratory species (HMS) in the Inter-American Tropical Tuna Commission (IATTC) Convention Area. At its Eighty-second Meeting in July 2011, the IATTC adopted a number of resolutions, some of which require rulemaking to implement domestically in the United States. This rule implements three of these decisions: the Resolution on Tuna Conservation 2011-2013 (C-11-01), the Resolution Prohibiting Fishing on Data Buoys (C-11-03), and the Resolution Prohibiting the Retention of Oceanic Whitetip Sharks (C-11-10). This action is necessary for the United States to satisfy its obligations as a member of the IATTC. The final regulations have been published in the *Federal Register* on November 4, 2011 (76 FR 68332), and will be codified in the *Code of Federal Regulations* at 50 CFR Part 300 Subpart C.

This guide provides a plain-language summary of how owners and operators of affected vessels, and other affected entities, can comply with new NMFS regulations and is issued in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996.

Regulations are subject to change, so this guide may become out of date. 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*.

Affected Area

The new requirements apply to the entire IATTC Convention Area. The IATTC Convention Area includes the waters bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian. This area includes the U.S. west coast Exclusive Economic Zone (EEZ).

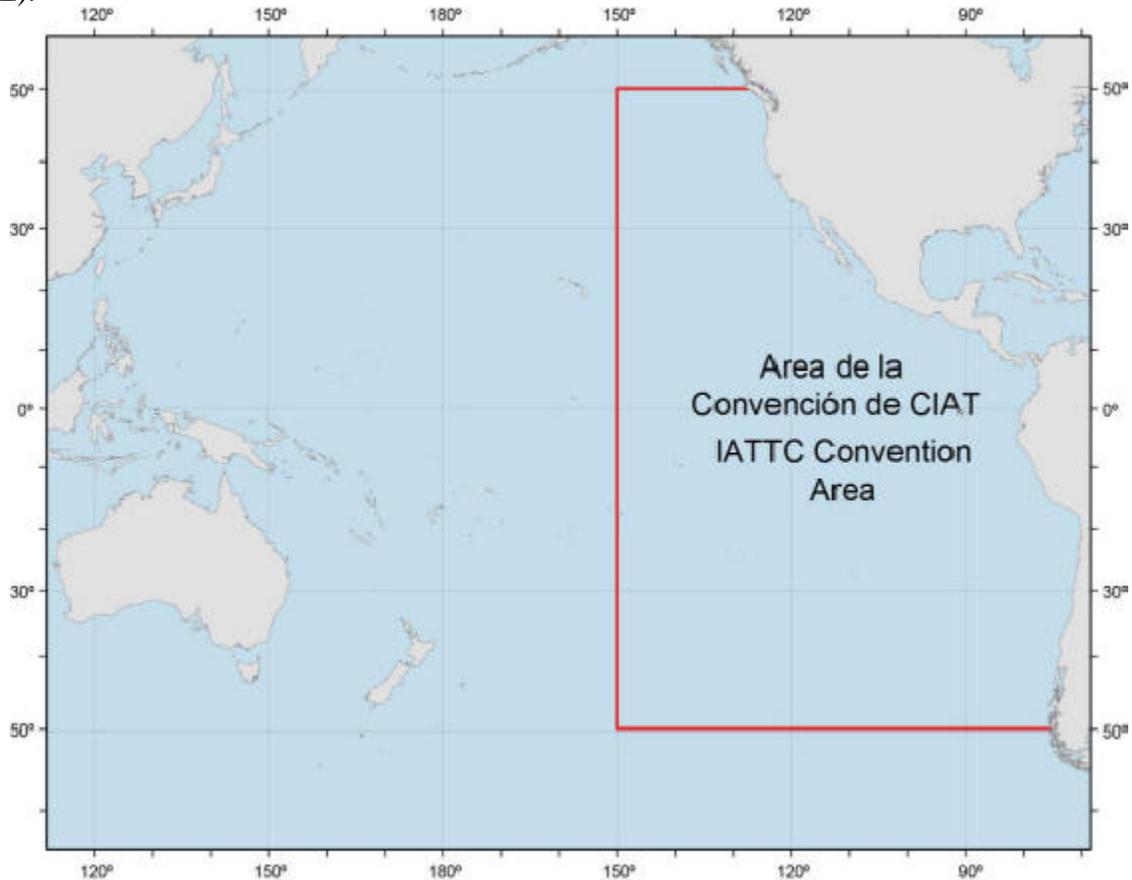


Figure 1. Map of IATTC Convention Area

MEASURES THAT APPLY TO ALL VESSELS TARGETING HMS IN THE CONVENTION AREA

Data Buoy Measures

Data buoys are defined as *floating devices, either drifting or anchored, that are deployed by one or more governmental or recognized scientific organizations or entities for the purpose of electronically collecting and measuring environmental data, and not for the purpose of fishing activities, and which has been reported to the IATTC by a member or cooperating non-member of the IATTC.*

- 1) All fishing vessels, or any fishing gear, equipment, or watercraft deployed by such a fishing vessel, may not be used to interact with a data buoy while in the Convention Area.

- a. Interact with a data buoy means to engage in conduct that could impair the functioning of a data buoy through actions that include, but are not limited to, encircling the buoy with fishing gear, tying up to or attaching the vessel, fishing gear, or any part or portion of the fishing vessel, including equipment such as watercraft, to a data buoy or its mooring, or cutting its anchor line.
- 2) It is prohibited for a longline or purse seine vessel to use fishing gear to fish for HMS within one nautical mile of an anchored data buoy.
 - a. The one-nautical-mile distance will be measured from the data buoy to the nearest portion of the vessel or items associated with the vessel, such as gear or watercraft deployed by the fishing vessel, to the data buoy.
 - b. This prohibition shall not apply if and when the fishing vessel is operated as part of a scientific research program that has received specific authorization by the IATTC or is conducting work on behalf of the IATTC.
 - 3) Vessel operators, crew members, or other persons onboard a fishing vessels may not remove a data buoy or any of its parts from the water and place it onboard the fishing vessel or tow a data buoy unless specifically authorized or requested to do so by the owner of the data buoy or an authorized representative or agent of the owner.
 - a. When practicable, advance written authorization must be available onboard a U.S. fishing vessel that has taken on board or tows a data buoy. In all other cases, a written document (e.g., fax, email) verifying the authorization must be obtained by the vessel owner or operator within 15 days of landing.
 - 4) Owners and operators of fishing vessels that become entangled with data buoys in the Convention Area must promptly remove the entangled fishing vessel, fishing gear, equipment, or associated watercraft with as little damage to the data buoy and its mooring and anchor lines as possible
 - 5) A vessel operator, crew member, or other person onboard a fishing vessel must take all reasonable measures to avoid fishing gear entanglement or interaction with drifting data buoys.

Oceanic Whitetip Measures

- 1) All vessels are prohibited from retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of an oceanic whitetip shark.
- 2) All vessels are required to release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel.

MEASURES THAT APPLY TO LARGE-SCALE LONGLINE VESSELS (LONGLINE VESSELS OVER 24 METERS (M) LENGTH OVERALL)

- 1) NMFS is extending the 500 metric ton (mt) annual quota for bigeye tuna caught in the Convention Area in 2012-2013.
- 2) Once NMFS determines in any of the years 2011, 2012, or 2013 that the limit is expected to be reached, NMFS would publish a notice in the *Federal Register* announcing that the limit is expected to be reached and that the restrictions will be effective on a particular date until the end of the calendar year.
- 3) Once the restrictions are announced, it will be prohibited to retain on board, land, or transship bigeye tuna caught by large-scale longline vessels in the IATTC Convention Area.

MEASURES THAT APPLY TO PURSE SEINE VESSELS CLASS SIZE 4-6 (GREATER THAN 182 METRIC TONS CARRYING CAPACITY)

- 1) NMFS is implementing a closure of the U.S. purse seine fishery operating in the Convention Area for a period of 62 days in 2011, 2012, and 2013. It is prohibited to fish in the Convention Area during the closure period that has been assigned to a vessel.
 - a. **For 2011, the closure is from November 18, 2011, to January 18, 2012 for all applicable purse seine vessels.**
 - b. Purse seine vessel owners have the ability to choose between two possible closure periods for 2012 and 2013. Vessel owners will be required by July 1, 2012, and July 1, 2013, to notify the NMFS Southwest Regional Administrator of his or her choice of closure period for the year.
 - c. For 2012 and 2013, the two options are **July 29 to September 28, or November 18 to January 18 of the following year.**
 - d. If a vessel owner fails to notify the NMFS Southwest Regional Administrator of his or her choice by the July 1 deadline, the vessel will be subject to the later closure period (November 18 to January 18 of the following year) by default.
 - e. Class size 4 vessels are allowed to make one single fishing trip of up to 30 days duration during the specified closure periods, provided that any such vessel carries an observer of the On-Board Observer Program of the Agreement on the International Dolphin Conservation Program (AIDCP).
- 2) NMFS is continuing the rectangular closure area on the high seas to the west of the Galapagos Islands for **30 days from September 29 to October 29** in 2012 and 2013. It is prohibited for applicable purse seine vessels to fish in the high seas closure area during this closure period.

- a. The area is **between 96° and 110° W. longitude and between 4° N. and 3° S. latitude** in the Convention Area and is depicted in Figure 2 below. The lines on this map are for illustrative purposes only and are not necessarily to scale.

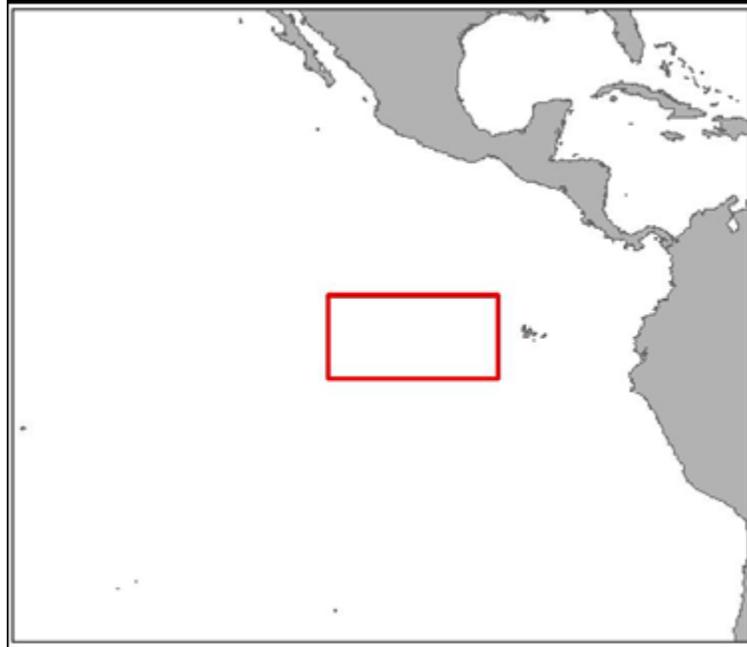


Figure 2. Temporary Closure Area on the High Seas to the West of the Galapagos Islands

- 3) The operator and crew of an applicable purse seine vessel may not discard from the vessel any bigeye tuna, yellowfin tuna, or skipjack tuna at sea in the Convention Area, except fish that are considered unfit for human consumption for reasons other than size.
- a. If on the final set of the trip, there is insufficient well space to accommodate all the fish caught in that set, fish captured in that set may be discarded, provided that no additional purse seine sets are made during the fishing trip.

Key Questions and Answers

DATA BUOY MEASURES

Question 1: Is there information available on what data buoys look like and which data buoys are covered under these regulations?

Answer: These measures only apply to data buoys that have been identified to the IATTC. The IATTC will post the list of data buoys that have been identified on their website at: <http://www.iattc.org/HomeENG.htm>. The website of NOAA's National Data Buoy Center

(NDBC) - <http://www.ndbc.noaa.gov/> also contains detailed information regarding data buoys maintained by NDBC and its partner organizations, including location and owner information. The website of the Observing System Monitoring Center, maintained by NOAA's Office of Climate Observations at <http://osmc.noaa.gov/Monitor/OSMC/OSMC.html> also provides information regarding the location of data buoys. The Western and Central Pacific Fisheries Commission (WCPFC) also adopted a similar measure in December 2009 (CMM 2009-05) and issued an information package on May 18, 2010, that provides sample information on the type of data buoys that may be encountered by fishermen. The information package is available on the WCPFC's website at <http://www.wcpfc.int/conservation-and-management-measures>.

Question 2: What if fishing gear unintentionally drifts into a data buoy resulting in an interaction or drifts within one nautical mile of a data buoy in the case of longline and purse seine vessels?

Answer: Such actions are prohibited under these new regulations. Fishing vessel owners and operators should take into account the location of anchored buoys and ocean currents prior to deploying gear.

OCEANIC WHITETIP MEASURES

Question 1: If an oceanic whitetip shark is caught as non-target catch and is dead when it is brought alongside the vessel, can it be landed legally?

Answer: No. Even if the shark is dead when it reaches the vessel, it must be released whole. No part of the shark can be landed or sold, including fins, meat, etc.

Question 2: Would cutting the line to release an oceanic whitetip shark be considered releasing an oceanic whitetip shark unharmed if the shark was still hooked?

Answer: It would depend on the given circumstances. For example, if ocean conditions or the disposition of the shark made it unsafe for crew members to de-hook the shark, then cutting the line to release the shark may be sufficient.

LOGLINE MEASURES

Question 1: How will vessel owners know when the quota has been reached?

Answer: Once NMFS determines in any year that the limit is expected to be reached by a specific future date in a given year, NMFS will publish a notice in the Federal Register announcing that the limit has been reached and that the restrictions are in effect on a particular date until the end of the calendar year. NMFS will publish the notice at least 7 calendar days before the effective date of the restrictions to provide fishermen advance notice of the restrictions. NMFS will also make updated estimates and/or projections of bigeye tuna landings publicly available on the NMFS Southwest Regional Office website (<http://swr.nmfs.noaa.gov/>) in order to help fishermen plan for the possibility of the quota being reached.

Question 2: What if you are on a fishing trip when the announcement is made that the limit has been reached and the prohibitions are in effect?

Answer: Any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions may be retained on board, transshipped, and/or landed, provided that they are landed within 14 days after the restrictions become effective.

Question 3: What if a vessel has declared that it will be using shallow-set longline gear and the prohibitions go into effect during a trip?

Answer: In the case of a vessel that has declared to NMFS pursuant to 50 CFR 665.23(a) that the current trip type is shallow-setting, the 14-day limit would be waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the restrictions, as recorded by the NMFS observer on board the vessel.

Question 4: Can bigeye tuna be transshipped after the prohibitions go into effect?

Answer: No. Starting on the announced closure date and extending through the last day of that calendar year, it would be prohibited to transship bigeye tuna caught in the Convention Area by a large-scale longline vessel to any vessel other than a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.21.

Question 5: After the prohibitions go into effect would the restrictions also apply to bigeye tuna caught in the WCPO?

Answer: No. These restrictions would not apply to bigeye tuna caught by longline gear outside of the IATTC Convention Area, such as in the western and central Pacific Ocean. However, to help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, there would be two additional, related, prohibitions that would be in effect starting on the announced date and extending through the last day of that calendar year. First, it would be prohibited for a large-scale longline vessel that has been declared, pursuant to CFR 665.23(a), that the current trip type is deep-setting, to fish with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. Second, if a large-scale longline vessel that has been declared, pursuant to CFR 665.23(a), that the current trip type is deep-setting, is used to fish outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel would have to be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area.

Question 6: How long will these regulations be in effect?

Answer: The measures apply to 2011, 2012, and 2013. However, in IATTC Resolution C-11-01, the IATTC has reserved the option of reversing or amending the bigeye tuna catch limits in longline fisheries at its regular annual session in 2012 and 2013. If such a decision occurs,

NMFS will take appropriate action to amend the applicable measures so they are consistent with the measures adopted by the IATTC.

PURSE SEINE MEASURES

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

Answer: The limits apply to purse seine vessels class size 4-6 (carrying capacity greater than 182 mt).

Question 2: Can purse seine vessels transit the closure areas during the closure periods?

Answer: Yes. Purse seine vessels may transit the closed areas; however, all fishing gear must be stowed in a manner so as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured. In addition, a transit waiver must be obtained by NMFS Southwest Regional Office.

Question 3: When is the catch retention requirement effective?

Answer: The catch retention requirement will be in effect no earlier than 0000 on January 1, 2012, UTC.

Question 4: What are the class size breakdowns?

Answer: Table 1 lists the IATTC class sizes and corresponding well volume carrying capacity measurements in both metric tons and cubic meters.

Table 1. IATTC vessel class sizes and corresponding well volume carrying capacity in cubic meters and metric tons.

IATTC Class Size	Metric tons (mt)	Cubic Meters (m ³)
1	< 46	<54
2	46 - 91	54 -107
3	92 - 181	108 212
4	182 - 272	213 – 318
5	273 - 363	319 – 425
6	>363	>425