

Sections 73.622(a) and 73.625(a) at coordinates 30–36–45 N. and 87–38–43 W. with a power of 396, HAAT of 552 meters and with a DTV service population of 1115 thousand. With this action, this proceeding is terminated.

**DATES:** Effective December 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 04–281, adopted October 28, 2004, and released November 5, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (301) 816–2820, facsimile (301) 816–0169, or via e-mail [joshir@erols.com](mailto:joshir@erols.com).

This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this [Report & Order, etc.] in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Television broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

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

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

#### § 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under Alabama, is amended by removing TV channel 61 at Mobile.

#### § 73.622 [Amended]

■ 3. Section 73.622(b), the Digital Table of Television Allotments under

Alabama, is amended by adding DTV channel 18 at Mobile.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 04–25219 Filed 11–10–04; 8:45 am]

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### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 04–3474, MB Docket No. 04–183, RM–10964]

#### Digital Television Broadcast Service; Billings, MT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Montana State University, allots DTV channel \*16 for noncommercial educational use at Billings, Montana. *See* 69 FR 30854, June 1, 2004. DTV channel \*16 can be allotted to Billings, Montana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 45–45–35 N. and 108–27–14 W. with a power of 1000, HAAT of 209 meters. Since the community of Billings is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. With this action, this proceeding is terminated.

**DATES:** Effective December 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 04–183, adopted October 28, 2004, and released November 5, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 301–816–2820, facsimile 301–816–0169, or via e-mail [joshir@erols.com](mailto:joshir@erols.com).

This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it

does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this [Report & Order etc.] in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

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

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

#### § 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Montana, is amended by adding DTV channel \*16 at Billings.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 04–25220 Filed 11–10–04; 8:45 am]

**BILLING CODE 6712–01–P**

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 040617186–4302–02; I.D. 051704D]

**RIN 0648–AS39**

#### International Fisheries; Pacific Tuna Fisheries; Restrictions for 2004 Purse Seine and Longline Fisheries in the Eastern Tropical Pacific Ocean

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

**ACTION:** Final rule.

**SUMMARY:** NMFS publishes this final rule to implement the 2004 management measures to prevent overfishing of the eastern tropical Pacific Ocean (ETP) tuna stocks, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department

of State (DOS) under the Tuna Conventions Act. The purse seine fishery for tuna in the Convention Area will be closed from December 13, 2004 through December 31, 2004. This final rule will also close the U.S. longline fishery in the Convention Area for the remainder of 2004 if the bigeye tuna catch in the Convention Area reaches the reported level of catch made in 2001. These actions are taken to limit fishing mortality on tuna stocks caused by purse seine fishing and longline fishing in the Convention Area and contribute to the long-term conservation of tuna stocks at levels that support healthy fisheries.

**DATES:** Effective December 13, 2004 through December 31, 2004.

**ADDRESSES:** Copies of the regulatory impact review/regulatory flexibility analysis may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90902-4213.

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register's** website at <http://www.gpoaccess.gov/>.

**FOR FURTHER INFORMATION CONTACT:** J. Allison Routt, Sustainable Fisheries Division, Southwest Region, NMFS, (562) 980-4030.

**SUPPLEMENTARY INFORMATION:** The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949 (Convention). The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include the waters of the ETP bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of tuna stocks and promote viable fisheries. Under the Tuna Conventions Act, 16 U.S.C. 951-962, NMFS must publish regulations to carry out IATTC recommendations and resolutions that have been approved by DOS. A proposed rule and request for comments was published in the **Federal Register** (69 FR 122) on June 25, 2004. The Southwest Regional Administrator also is required by regulations at 50 CFR

300.29(b)(3) to issue a direct notice to the owners or agents of U.S. vessels that operate in the ETP of actions recommended by the IATTC and approved by the DOS. Notices to the fleet were issued in October 2003, May 2004, and again in October 2004 regarding these actions.

At an extraordinary meeting in October 2003, the IATTC adopted a resolution addressing yellowfin, bigeye, and skipjack tuna conservation for 2003 and 2004. The resolution called upon the Parties to the Convention and cooperating non-Parties to prohibit tuna purse seine fishing in a portion of the Convention Area for the month of December 2003 and to close the entire Convention Area for a 6-week period beginning August 1, 2004. The 2003 closure was implemented by separate action last year. At the IATTC June 2004 meeting, the October 2003 resolution was revised. The June 2004 resolution ("revised resolution") is a multi-annual program on the conservation of tuna in the eastern Pacific Ocean for 2004, 2005, and 2006.

The revised resolution offers Parties a choice for closing the purse seine fishery in the Convention Area: either a 6-week closure beginning August 1, 2004, or a 6-week closure beginning November 20, 2004. This closure will target fishing activity that results in high catches of juvenile tuna. Therefore, the closure should result in improved yields from the stocks later in the year or in subsequent years.

The revised resolution also calls upon each Party and cooperating non-Party to take measures necessary to ensure that each nation's longline catch of bigeye tuna in the Convention Area during 2004 will not exceed the total longline catch by the nation in the Convention Area in 2001. The U.S. catch level for 2001 is estimated to have been 150 metric tons in the Convention Area. This is intended to prevent overfishing of the stock, which has declined in recent years while longline fishing effort has greatly expanded.

The IATTC action at the extraordinary meeting in October 2003 came after considering a variety of measures, including the use of quotas and partial fishery closures as implemented in 1999 through 2002 and the full month purse seine closure used in 2003. The revised resolution of June 2004 incorporated flexibility for nations to administer the purse seine closure in accordance with national legislation and national sovereignty. The selected measures should provide protection against overfishing of the stocks in a manner that is fair, equitable, and readily

enforceable. The DOS has approved the IATTC recommendations.

The conservation and management measures are based on 2004 assessments of the condition of the tuna stocks in the ETP and historic catch and effort data for different portions of the ETP, as well as records relating to implementation of quotas and closures in prior years. The measures are limited to the Convention Area and are believed by the IATTC scientific staff to be sufficient to reduce the risk of overfishing of tuna stocks, especially when considered in combination with the measures implemented in December 2003. The IATTC met in June 2004 and reviewed new tuna stock assessments and fishery information and considered the new assessment and information. In evaluating possible management measures for 2004 and future years, the IATTC selected a multi-annual time/area approach to conserve and manage the tuna stocks in the Convention Area.

The Regional Administrator, Southwest Region, sent notices October 2003, May 2004, and October 2004 to owners and agents of U.S. fishing vessels of the actions that were recommended by the IATTC and have been approved by the DOS.

This final rule implements the late closure to purse seining in the Convention Area from December 13, 2004 through December 31, 2004. This approach is intended to limit fishing mortality and prevent overfishing in an effort to conserve tuna in a fair, equitable, and readily enforceable manner. This final rule also provides that the U.S. longline fishery for bigeye tuna in the Convention Area will close for the remainder of the calendar year 2004 if the catch reaches 150 metric tons, the catch level of 2001. This means that no bigeye tuna may be taken and retained or possessed after the closure. NMFS will provide notice of closure of the longline fishery in the **Federal Register**. These actions ensure that U.S. vessels fish in accordance with the conservation and management measures that the IATTC recommended in June 2004. A separate rulemaking will be implemented in 2005 for conservation and management measures in that year. This provides greater flexibility for rulemaking in the event that the IATTC revises its recommendation for that year.

#### Comments and Responses

During the comment period for the proposed rule, NMFS received comments from tuna industry organizations, environmental organizations, members of the public, and the Western Pacific Fishery

Management Council. Key issues and concerns are summarized below and responded to as follows:

#### Timing of the Closure

*Comment 1:* Vessel owners do not support the closure period set forth in the proposed rule. They prefer that the closure take place during the period November 20, 2004, to December 31, 2004. The vessel owners have two specific reasons for preferring the year-end closure. First, the weather conditions on the high seas and in the Convention Area at year-end are normally more problematic than during the August-September period. Fishing conditions are affected by weather and the vessel owners would prefer that the closure not take place during the period when the weather is least likely to adversely affect fishing. Second, there is currently a short supply of fish, and fish prices have finally begun to return to levels that support economically profitable fishing. A mid-year closure could prevent U.S. vessels from capitalizing on this opportunity. Finally, a later closure allows better opportunity for planning operations and scheduling repairs maintenance during the closure. For these reasons U.S. vessel owners would prefer to delay the closure until later in the year.

*Response:* NMFS has decided to implement the late closure supported by industry for the reasons presented.

*Comment 2:* One commenter expressed a preference for the August 1 through September 11, 2004, closure.

*Response:* NMFS considered this closure. However, the overwhelming majority of commenters favored of the 6-week closure beginning November 20, 2004. For the reasons stated in Comment 1, NMFS has chosen to implement the later closure. The impacts discussed in the RIR are the same under both closure options.

#### 2001 U.S. Longline Catch

*Comment 3:* It is probably wrong to assume that the catch of bigeye in the ETP by U.S. flagged longline vessels is no more than 100 metric tons.

*Response:* NMFS agrees and has concluded that the catch in 2001 was 150 metric tons. In response to comments, NMFS scientists reevaluated the U.S. longline catch of bigeye tuna for 2001. NMFS scientists estimated the longline bigeye tuna catch east of 150° W. meridian by multiplying the numbers of fish reported as retained in log books from the Hawaii and California based longline fleets times the mean weight of bigeye tuna from the Hawaii-based longline fishery. Three data sets were used to estimate bigeye catches east of 150° W. meridian. These

were the Hawaii-based longline logbooks data (1999–2003), the Honolulu market sample data (1999), and the State of Hawaii Fish Dealer Data (2000–2003). In addition, U.S. flagged longline vessels operate out of California and catch bigeye tuna east of 150° W. These vessels are required to fill in either the NMFS Western Pacific Daily Longline Fishing Log or High Seas Pelagic Longline Logs and submit them to the NMFS Southwest Regional Office in Long Beach, California. These logbook data provide fishing location and catch by species. The estimated U.S. longline bigeye tuna catch was 150 metric tons in 2001. The relatively low yields in 2001 and 2002 were probably caused by unusual fishing patterns that reflected regulatory initiatives to the U.S. longline fleet targeting swordfish in the ETP.

*Comment 4:* Why were the 2001 levels used and not earlier years that may be more indicative of U.S. historical catches?

*Response:* The IATTC Secretariat recommended and the IATTC chose the year 2001 for the bigeye longline benchmark because this was the most recent year that nations party to or cooperating with the IATTC were able to supply a complete annual data set and because this represented the last year before a substantial increase in eastern Pacific longline fishing. Parties to the IATTC wanted to limit longline effort to this lower level.

#### Bigeye Longline Quota

*Comment 5:* A commenter asked who conducted the analysis on which the initial estimate of 100 metric tons of bigeye tuna was based and questioned if it was based on the best available data. Further, the commenter wanted to know what protocols govern the monitoring of U.S. longline bigeye catches in the IATTC area; and which NMFS office is taking the lead on this issue. The commenter requested NMFS communicate better on issues within the Convention Area that may affect fisheries by vessels based different regions.

*Response:* The initial estimate of 2001 U.S. longline catch of bigeye tuna in the Convention Area was derived by the NMFS Southwest Region using landings and log book data from both Hawaii and California. While the preliminary estimate of the U.S. catch in 2001 was 100 metric tons, after receiving public comments, NMFS reviewed the initial estimate and made adjustments based on a sound statistical basis. NMFS will implement a protocol for monitoring U.S. longline bigeye catches in the Convention Area so that the fishery can be closed if the U.S. catch limit for 2004

is reached before the end of the year. In addition, NMFS will also give direct notice of any longline closure to fishing vessel owners and operators. The Southwest Region has the lead for collaborating with the DOS and constituents in implementing conservation recommendations of the IATTC. The Southwest Region recognizes that longline vessels based in Hawaii may fish in the Convention Area and thus could be affected by measures recommended by the IATTC and approved by DOS. The Southwest Region will increase its efforts to communicate with all stakeholders including the relevant fishery management councils prior to IATTC meetings to ensure that the interests of all U.S. fisheries are considered in development of U.S. positions at IATTC. The Southwest Region also will inform the councils of IATTC actions as soon after meetings as practicable. NMFS fully recognizes that the regional councils have roles as principals in highly migratory species fisheries management under the Magnuson-Stevens Fishery Conservation and Management Act and is working to ensure that measures under international conventions are compatible and coordinated to the extent necessary.

#### Changes From the Proposed Rule

The final rule differs from the proposed rule by implementing the late closure alternative provided by the revised resolution. Based on comments received on the proposed rule, the U.S. has chosen the late closure. Also, comments received during the comment period requested that NMFS reevaluate the U.S. longline catch of bigeye tuna in the Convention Area for 2001. NMFS agreed and concluded that the catch in 2001 was 150 metric tons.

#### Corrections and Technical Changes

One commenter noted that the cite to 50 CFR 200.29 in the Classification section was in error and should be corrected to read 50 CFR 300.29. This has been corrected. The reference described at 50 CFR 300.29(b)(3) as requiring the Southwest Regional Administrator to give direct notice of IATTC actions to owners and operators of ETP purse seine vessels is not correct. Actually, § 300.29(b)(3) requires the Southwest Regional Administrator to give operators and owners of any type of vessel direct notice of closure actions that affect those vessels. The distinction is relevant to this final rule because § 300.29(b)(3) applies to the longline fleet as well as the purse seine fleet. This has been corrected.

**Classification**

This action is implemented under the regulations for the Pacific Tuna Fisheries found at 50 CFR 300.29.

On December 8, 1999, NMFS prepared a biological opinion (BO) assessing the impacts of the fisheries as they would operate under the interim final regulations (65 FR 47, January 3, 2000) implementing the International Dolphin Conservation Program Act (IDCPA). For the final rule (69 FR 176, September 13, 2004) to implement the IDCPA, NMFS amended the incidental take statement included in the December 8, 1999, BO. NMFS concluded that the fishing activities conducted under those regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This final rule will not result in any changes in the fisheries such that there would be impacts beyond those considered in that BO. The IATTC has also taken action to reduce sea turtle injury and mortality

from interactions in the purse seine fishery so impacts of the fisheries should be lower than in the past. Because this closure does not alter the scope of the fishery management regime analyzed in the IDCPA rule, or the scope of the impacts considered in that consultation, NMFS is relying on that analysis to conclude that this final rule will not likely adversely effect any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. Therefore, NMFS has determined that additional consultation is not required for this action.

The U.S. ETP tuna purse seine fisheries occasionally interact with a variety of species of dolphin, and dolphin takes are authorized and managed under the IDCPA. These conservation management measures in this final rule do not affect the administration of that program, which is consistent with section 303(a)(2) of the Marine Mammal Protection Act.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding the economic impacts of this action. However, a number of commenters suggested changing the date of the closure to, among other things, ease the economic impacts of the rule. In response, NMFS has done what the commenters asked. As a result, a regulatory flexibility analysis was not prepared.

**Authority:** 16 U.S.C. 951–962.

Dated: November 9, 2004.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 04–25302 Filed 11–10–04; 8:45 am]

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