

**JUSTIFICATION FOR CHANGE
INTERNATIONAL DOLPHIN CONSERVATION PROGRAM
OMB CONTROL NO. 0648-0148**

The National Marine Fisheries Service (NMFS) is proposing regulations under the authority of the Tuna Conventions Act of 1950 (TCA), as amended, to implement a resolution adopted by the Inter-American Tropical Tuna Commission (IATTC) in June 2013. This proposed rule implements the decisions pertaining to fishing restrictions on whale sharks (*Rhincodon typhus*) contained in the Resolution on Collection and Analysis of Data on Fish-Aggregating Devices (FADs) (C-13-04). The regulations would apply to owners and operators of U.S. fishing vessels used for commercial fishing for highly migratory species in the IATTC Convention Area. The regulations would prohibit the deliberate setting of a purse seine net on a whale shark, require reporting requirements in the event a whale shark is non-deliberately encircled in a purse seine net, and require reasonable measures to be taken to ensure safe release of the whale shark. The rule would amend the Pacific tuna fisheries regulations at 50 CFR part 300, subpart C. These revisions would ensure that the United States is satisfying its obligations under the TCA.

This rule, RIN 0648-BD53, amends current regulations for purse seine fisheries operating in the IATTC Convention Area by:

1. Prohibiting owners, operators, and crew of fishing vessels from setting or attempting to set a purse seine in the Convention Area on or around a live whale shark if the animal is sighted prior to the commencement of the set or the attempted set.
2. Requiring the crew, operator, and owner of a fishing vessel to release any whale shark that is non-deliberately encircled in a purse seine net in the Convention Area, and to do so in a manner that ensures its safe release.
3. Requiring the owner and operator of a fishing vessel that non-deliberately encircles a whale shark with a purse seine in the Convention Area to record and report the incident.

The one aspect of this rule that will effect a change in information collection:

Whale shark non-deliberate encirclement reporting. The owner and operator of a U.S. purse seine fishing vessel of 400 short tons (62.8 -metric tons) carrying capacity or less in the Convention Area that encircles a whale shark (*Rhincodon typhus*) with a purse seine in the Convention Area shall ensure that the incident is recorded in the comments section of the IATTC Seiner Fishing Record and Bridge Log as required in 50 CFR § 300.22(a). The comment shall include: the number of individual whale sharks, details of how and why the encirclement happened, where it occurred, steps taken to ensure safe release, and an assessment of the life status of the whale shark on release (including whether the animal was released alive, but subsequently died).

An additional rulemaking, RIN 0648-BD44, is also in progress and includes similar whale shark interaction reporting requirements via the Regional Purse Seine Logsheet (RPL) for vessels fishing in the area of competence of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The RPL is included in approved information collection, OMB Control No. 0648-0218, which will also have a change request filed with final rule RIN 0648-BD44.

In final rulemaking for RIN 0648-BD53, 50 CFR § 300.22(a) is amended to clarify that in addition to the IATTC Bridge Log, for purse seine vessels originating trips in the WCPFC Area and crossing into the

IATTC Convention Area, the RPL is an acceptable means to report any whale shark interactions. This alternative reporting option will be effective once final approval is received for both final rules and their associated information collections.

In response to the proposed rule published June 9, 2014 (FR 32903), one comment received was supportive of the action. No comments were received regarding the information collection.

The number of respondents is not expected to change as a result of this rulemaking. According to data received from the IATTC, in the last 10 years, U.S. purse seine vessels in the Eastern Pacific Ocean (EPO) have had two interactions with whale sharks: once each in 2006 and 2009. In both instances, the encirclement of the whale shark was incidental and non-deliberate to a fish aggregating device directed set, and the whale shark was released and presumed unharmed. No data on interactions with whale sharks exists for purse seine vessels smaller than 400 tons.

Given the rare occurrence of U.S. purse seine vessel incidental interactions with whale sharks in the EPO, the proposed rule is not expected to affect or change current operating procedures.

It is estimated that about 0.2 responses per year (1 every 5 years) may be required in the comments section of the Bridge Log or RPL logbook.

Additional annual burden: $0.2 \times .17 \text{ minutes (10 minutes)} = 0.034 \text{ hour}$. This change equates to no change, as it is only a fraction of an hour.

No additional annual costs are anticipated.