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Finding of No Significant Impact

Restrictions on the Use of Fish Aggregating Devices in Purse Seine Fisheries for 2015; RIN 0648-BE36

This Finding of No Significant Impact (FONSI) was prepared according to the guidelines established in National Marine Fisheries Service (NMFS) Instruction 30-124-1 and the requirements set forth in the National Oceanic and Atmospheric Administration's (NOAA) Administrative Order (NAO 216-6, May 20, 1999). The FONSI is based on the 2014 Supplemental Environmental Assessment (SEA) prepared pursuant to the requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. § 4321 et seq.) to analyze the potential impacts on the human environment from promulgation of the rule (RIN 0648-BE36), "Restrictions on the Use of Fish Aggregating Devices in Purse Seine Fisheries for 2015."

Background

At its Tenth Regular Session, in December 2013, the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC) adopted Conservation and Management Measure (CMM) 2013-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean." CMM 2013-01 went into effect February 4, 2014, and is generally applicable for the 2014-2017 period. The CMM includes provisions for purse seine vessels, longline vessels, and other types of vessels that fish for highly migratory species. The CMM's provisions for purse seine vessels include limits on fishing capacity, limits on the allowable level of fishing effort, restrictions on the use of fish aggregating devices (FADs), a requirement to retain all bigeye tuna, yellowfin tuna, and skipjack tuna except in specific circumstances, and a requirement to carry observers. The SEA analyzed a proposed rule to implement the FAD restrictions for 2015. The CMM's FAD restrictions for subsequent years, as well as other provisions of the CMM, would be implemented through separate rules. The National Marine Fisheries Service (NMFS) is implementing CMM 2013-01 through multiple rules primarily for timing reasons – different provisions of the CMM need to go into effect at different times.

Earlier WCPFC CMMs for tropical tuna management, which contained provisions for FAD restrictions in purse seine fisheries and which NMFS implemented via rulemaking, include CMM 2008-01, "Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean," CMM 2011-01, "Conservation and Management Measure for temporary extension of CMM 2008-01," and CMM 2012-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean." CMM 2008-01 set forth specific provisions for purse seine fisheries for the years 2009, 2010, and 2011, which NMFS implemented in

2009 (see final rule published August 4, 2009, in 74 *Federal Register* (FR) 38544; hereafter 2009 rule). Due to a change in meeting schedule, in December 2011, the WCPFC adopted an intersessional decision to extend the provisions of CMM 2008-01 until the WCPFC met in March 2012. NMFS implemented that intersessional decision for the U.S. purse seine fleet operating in the WCPO through an interim rule in 2011 (see interim rule published December 30, 2011 in 76 FR 82180; hereafter 2011 rule). Adopted in March 2012, CMM 2011-01 extended the majority of the provisions of CMM 2008-01 through the end of 2012. Given that the 2011 rule extended the applicable provisions of CMM 2011-01 for the U.S. purse seine fleet through 2012, there was no need for NMFS to take additional regulatory action to put into place the measures of CMM 2011-01 for purse seine fisheries. NMFS implemented the purse seine provisions of CMM 2012-01 for 2013 and 2014 in 2013 (see final rule published May 23, 2013 in 78 FR 30773; hereafter 2013 rule). CMM 2013-01 has provisions for FAD restrictions that are similar to the previous CMMs.

NMFS prepared an Environmental Assessment (EA), "Environmental Assessment for the Implementation of the Decisions of the Fifth Regular Annual Session of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean: Fishing Restriction and Observer Requirements in Purse Seine Fisheries for 2009-2011 and Turtle Mitigation Requirements in Purse Seine Fisheries and Bigeye Tuna Catch Limits in Longline Fisheries in 2009, 2010, and 2011" (hereafter 2009 EA), which analyzed the impacts of the 2009 rule on the human environment.[1]

In the 2009 EA, NMFS analyzed four action alternatives for the 2009 rule, as well as the No-Action Alternative. NMFS concluded that all of the alternatives would have similar effects. NMFS determined that all of the action alternatives analyzed in the 2009 EA would have minor beneficial effects or no effects on resources in the affected environment.

NMFS prepared an EA, "Environmental Assessment for a Rule to Implement Decisions of the Western and Central Pacific Fisheries Commission for: Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2013 and 2014" (hereafter 2013 EA), which analyzed the impacts of the 2013 rule on the human environment and incorporated the 2009 EA by reference.[2] The 2013 EA included detailed analysis of three action alternatives, as well as the No-Action Alternative. Similar to the 2009 EA, NMFS concluded that all of the alternatives would have similar effects. NMFS determined that all of the action alternatives analyzed in the 2013 EA would have minor beneficial effects or no effects on resources in the affected environment.

The final 2014 SEA supplements the 2013 EA to account for changes to the FAD restrictions as part of the implementation of WCPFC decisions on tropical tunas.

The SEA analyzes two action alternatives for implementing the FAD restrictions for 2015, as well as the No-Action Alternative. One action alternative (Alternative 2) would prohibit setting on FADs and on fish that have aggregated in association with a fishing vessel, in the WCPFC's area of competence (Convention Area) between the latitudes of 20° North and 20° South, from July 1 through September 30, 2015. There would also be a specified 2,202 limit on the number of FAD sets that could be made in 2015. The other action alternative (Alternative 3, which is NMFS' preferred alternative) would prohibit setting on FADs and on fish that have aggregated in association with a fishing vessel, in the Convention Area between the latitudes of 20° North and 20° South, during the months of January, February, July, August

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[1] The 2009 EA (combined with the Finding of No Significant Impact) is available at *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2009-0108.*

[2] The 2013 EA (combined with the Finding of No Significant Impact) is available at *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0043.*

and September in 2015. There would also be a specified 3,061 limit on the number of FAD sets that could be made in 2015. The SEA concluded that all of the alternatives would have similar effects to resources in the human environment. However, the extent of the effects could vary somewhat depending on the period of time that the FAD restrictions would be in effect under the different action alternatives. For the purposes of this document, the term "proposed action" refers to Alternative 3, which is the alternative NMFS set forth in the proposed rule.

The September 2014 version of the draft SEA was made available to the public in conjunction with the publication of the proposed rule. Based on further internal review, several minor editorial changes have been made to the SEA, which is attached to this FONSI.

Significance Analysis

NAO 216-6 contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations for implementing NEPA at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to making this FONSI and has been considered individually, as well as in combination with the others.

The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

Response: No. The target species of the U.S. WCPO purse seine fishery are skipjack tuna and yellowfin tuna, with bigeye tuna being an incidentally caught species. As stated in Section 4.3 of the SEA, the proposed action would likely decrease the impacts from fishing on the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna by reducing the fishing mortality on predominantly juvenile tunas and adult skipjack tuna. The FAD restrictions could also have some potentially adverse effects on the WCPO stock of yellowfin tuna by an increase in the overall fishing mortality on the stock as a result of the fleet targeting large unassociated tunas during the period of the FAD restrictions. However, any adverse effects would be ameliorated by reduced catches of juvenile yellowfin tuna during the period of the FAD restrictions, which may have a chance to move or recruit to a deeper, non-predominantly FAD associated life cycle that would provide benefits in terms of additional adult yellowfin tuna available to unassociated fishing.

The indirect effects of the proposed action on bigeye, skipjack, and yellowfin tuna stocks in the WCPO would be similar to the direct effects described above, since the proposed action would be expected to result in decreased fishing mortality on the stocks, particularly decreased fishing mortality on juvenile tunas, which could lead to long-term positive effects on the stocks. However, these effects would be relatively small, because numerous other factors contribute to the status of the stocks.

2) Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?

Response: No. Section 4.4 of the SEA discusses the potential impacts to non-target fish species (other than bigeye tuna) from the proposed action. The proposed action could cause some change in the amounts and types of non-target fish species caught by the U.S. WCPO purse seine fleet. During the periods when the FAD prohibitions would be in effect, the fleet might make unassociated rather than FAD sets, which would affect the composition of the catch, including both target stocks and non-target species. Direct

impacts to these non-target fish species would include a potential increase in the catch of some species and a decrease in the catch of other species, due to the changes in fishing patterns and practices of the fleet from shifting to unassociated sets during the periods when the restrictions would be in effect. Indirect or long-term effects would include the greater potential for adverse effects to the stocks of these non-target fish species that experience increased fishing mortality from increased fishing on unassociated sets during the periods when the restrictions would be in effect and reduced potential for adverse effects to the stocks of non-target fish species that experience decreased fishing mortality from decreased fishing on associated sets. However, these effects would be relatively small, because numerous other factors contribute to the status of the stocks.

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and identified in FMPs?

Response: No. As stated in Chapter 4, Section 4.5 of the SEA, the proposed action would not cause any adverse impacts to areas designated as EFH or Habitat Areas of Potential Concern under MSA provisions, or to ocean and coastal habitats. Such resources would not be affected because the potential changes in fishing patterns and practices of the fleet would take place in areas of the ocean far from shorelines and would not affect the seafloor or benthic habitats since purse seine fishing does not involve contact with the seafloor (see Section 3.2 of the SEA for a description of purse seine fishing). Also, because any effects to fish stocks would be relatively small, as discussed above, any pelagic fish habitat designated as EFH, including the water column, or HAPC, would not be expected to experience any effects – either beneficial or adverse – from implementation of the proposed action.

4) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: No. As indicated in Section 4.1 of the SEA, under the proposed action, the FAD restrictions are expected to affect the fishing patterns and practices of the fleet by transferring fishing effort from FAD sets to unassociated sets during the five months the restrictions would be in effect and after the 3,061 FAD set limit is reached (if it is reached), and possibly reducing the amount of fishing effort during the prohibition periods relative to other periods of the year. As stated in the Regulatory Impact Review (RIR) for the proposed rule, it is possible that vessel operators may schedule routine maintenance activities during the FAD prohibition periods or after the FAD set limit is reached. On the other hand, the FAD set limit, which would be a competitive limit (not allocated among vessels) could motivate vessels to fish harder earlier in the year than they otherwise would. Such a "race-to-fish" effect could cause vessel operators to forego maintenance in favor of fishing or to fish in weather or ocean conditions that they otherwise would not. This could affect the health and safety of the crew, but given that the fleet generally fishes throughout the year, even when FAD restrictions are in effect (see Figure 4 of the SEA), these effects are not expected to be substantial.

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

Response: No. Based on incomplete and unverified observer data from the Pacific Islands Forum Fisheries Agency, the U.S. purse seine fishery may have had limited interactions with marine mammals in recent years. The number of these interactions and whether the marine mammals were ESA-listed species is unknown at this time. Data also indicate that the U.S. purse seine fleet has had some interaction with sea turtles in the WCPO, but the U.S. WCPO purse seine fleet has not been known to interact with seabirds. As stated in Section 4.5 of the SEA, direct and indirect effects to marine mammals and sea turtles listed as endangered or threatened under the Endangered Species Act (ESA) from the

implementation of the proposed action would likely be negligible, although it is possible there would be a slight reduction in interactions with protected species. To the extent that there is a shift in fishing patterns and practices, any effects in terms of interactions with protected resources would be little compared to typical year-to-year variations in interactions with species driven by changing oceanic and economic conditions. As indicated in Figure 7 of the SEA, the proportion of FAD versus unassociated sets varies substantially from year to year, so the overall shifts in fishing patterns and practices of the fleet in a given year depend mostly on oceanographic and economic factors, which would not be affected by the proposed action. The Indo-West Pacific distinct population segment (DPS) of the scalloped hammerhead shark has been recently listed as threatened under the ESA. NMFS has reinitiated ESA consultation on the effects of the U.S. WCPO purse seine fishery on this species and has determined that the continued operation of the fishery during the consultation period is not likely to jeopardize the continued existence of the Indo-West Pacific DPS of the scalloped hammerhead shark.

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: No. The purpose of the proposed action is to implement the FAD restriction provisions of CMM 2013-01 for the U.S. WCPO purse seine fleet, in order to contribute to the underlying objectives of CMM 2013-01 regarding WCPO bigeye tuna, yellowfin tuna and skipjack tuna, which are to reduce or maintain their respective fishing mortality rates at levels no greater than the fishing mortality rates associated with maximum sustainable yield. As discussed in Section 3.5 and Section 4.3 of the SEA, adult bigeye tuna, skipjack tuna, and adult yellowfin tuna are considered among the top predators of the tropical or warm pool marine ecosystem. Changes to WCPO stocks of these species could lead to trophic interactive effects, including increased competition for prey species with other top predators. Larval and juvenile tunas are also sources of food for other marine species, such as fish, seabirds, porpoises, marine mammals, and sharks. Thus, increases in larval and juvenile tuna could increase the food available for these other species. However, it is unlikely that the effects of the proposed action to the WCPO stocks of bigeye, skipjack, and yellowfin tuna, which would be short-lived, would be large enough to impact the marine ecosystem. Overall, the proposed action would not cause substantial effects on biodiversity and ecosystem function.

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: No. As stated in the Regulatory Impact Review, some of the provisions of the rule could lead to some adverse economic impacts to fishing operations. Vessels in the U.S. WCPO purse seine fleet make both unassociated sets and FAD sets when not constrained by regulation. So constraints on either type of set are expected to bring adverse economic effects to fishing operations. Because the factors affecting the relative value of FAD sets and unassociated sets are many, and the relationships among them are not well known, it is not possible to quantify the expected economic impacts of the proposed action. As stated in Section 4.1 of the SEA, the FAD restrictions are expected to affect the fishing patterns and practices of the fleet by transferring fishing effort from FAD sets to unassociated sets during the five months that FAD sets would be prohibited and after the 3,061 FAD set limit is reached (if it is reached), as compared to the No-Action Alternative. As discussed throughout the SEA, these direct effects on the fishery would not lead to substantial effects on the human environment – at the most, there could be some decreased fishing pressure on the WCPO stocks of bigeye tuna, skipjack tuna, and yellowfin tuna, with the effects on other resources in the affected environment being none, negligible, or minor.

8) Are the effects on the quality of the human environment likely to be highly controversial?

Response: No. As stated in the SEA, the FAD restrictions are expected to affect the fishing patterns and practices of the fleet by transferring fishing effort from FAD sets to unassociated sets during the five

months that FAD sets would be prohibited and after the 3,061 FAD set limit is reached (if it is reached), as compared to the No-Action Alternative. Overall, these effects could lead to some decreased fishing pressure on the WCPO stocks of bigeye tuna, skipjack tuna, and yellowfin tuna, and it is unlikely that there would be any controversy regarding the size, nature, or effects of the action (i.e., the effects of the action on the quality of the human environment). Moreover, the SEA was made available during the public comment period for the proposed rule and the two comment letters submitted on the proposed rule did not raise any issues regarding the information in the SEA.

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

Response: No. As described in Section 3.6.4 of the SEA, there are several National Wildlife Refuges and National Monuments in the affected environment. However, these resources would not be affected because the potential changes in fishing patterns and practices of the fleet would take place in areas of the ocean far from shorelines and would not affect the seafloor or benthic habitats since purse seine fishing does not involve contact with the seafloor. In addition, as discussed in Section 3.6 of the SEA, commercial fishing is already prohibited in the National Monuments, pursuant to the 2009 Presidential Proclamation.

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: No. As described throughout the SEA, although the magnitude of the effects on the human environment cannot be quantified with certainty, the types of effects and the direction of those effects can be predicted. The purpose of the proposed action is to implement the provisions of CMM 2013-01 for the U.S. WCPO purse seine fleet that are necessary prior to January 1, 2015, in order to contribute to the underlying objectives of CMM 2013-01 regarding WCPO bigeye tuna, yellowfin tuna and skipjack tuna, which are to reduce or maintain their respective fishing mortality rates at levels no greater than the fishing mortality rates associated with maximum sustainable yield. Under the proposed action, the FAD restrictions are expected to affect the fishing patterns and practices of the fleet by transferring fishing effort from FAD sets to unassociated sets during the five months that FAD sets would be prohibited and after the 3,061 FAD set limit is reached (if it is reached), as compared to the No-Action Alternative. Overall, these effects could lead to some decreased fishing pressure on the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna. Thus, the effects on the human environment from the proposed action would not be highly uncertain or involve unique or unknown risks.

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: No. As discussed in Chapter 5 of the EA, the cumulative impacts on the resources in the affected environment that could be impacted by the proposed action are not expected to be substantial. The primary direct effects of the proposed action would be to decrease fishing pressure on the stocks of bigeye, skipjack, and yellowfin tuna in the WCPO. As stated in the 2013 EA, the status of the stocks of bigeye, skipjack, and yellowfin tuna with respect to MSA status determination criteria (i.e., with respect to whether a stock is overfished or subject to overfishing) has not changed since 2009, and a status change due to this action is not anticipated. The other present and reasonably foreseeable future actions identified in Sections 5.2.2 and 5.2.3 of the SEA would also be expected to have minor effects on these stocks, though this is difficult to predict with certainty. With respect to non-target fish stocks and protected resources, the cumulative effects would also not be expected to be substantial. The other actions include other NMFS rulemakings to implement provisions of CMM 2013-01, including a rulemaking to

implement purse seine fishing effort limits, which is not expected to have substantial effect on the human environment. Overall, the cumulative impacts from implementation of the proposed action would not be expected to lead to substantial cumulative impacts on resources in the affected environment, and no significant cumulative impacts on the human environment are anticipated from implementation of the proposed action.

12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: No. As stated in Section 4.5 of the SEA, such resources would not be affected because the potential changes in fishing patterns and practices of the fleet would take place in areas of the ocean far from shorelines and would not affect the seafloor or benthic habitats since purse seine fishing does not involve contact with the seafloor. Thus, there would be no effects to districts, sites, highways, structures or objects listed in or eligible for listing in the National Register of Historic Places or potential loss or destruction of significant scientific, cultural, or historical resources.

13) Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?

Response: No. As stated above, under the proposed action, the FAD restrictions are expected to affect the fishing patterns and practices of the fleet by transferring fishing effort from FAD sets to unassociated sets during the five months that FAD sets would be prohibited and after the 3,061 FAD set limit is reached (if it is reached), as compared to the No-Action Alternative. Overall, these effects could lead to some decreased fishing pressure on the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna. Although some transfer of effort is anticipated, none of these effects would be expected to result in the introduction or spread of a nonindigenous species since the vessels in the fleet are not expected to enter any new geographic areas of operation.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Response: No. The purpose of the proposed action is to implement the provisions of CMM 2013-01 for the U.S. WCPO purse seine fleet that are necessary prior to January 1, 2015, in order to contribute to the underlying objectives of CMM 2013-01 regarding WCPO bigeye tuna, yellowfin tuna and skipjack tuna, which are to reduce or maintain their respective fishing mortality rates at levels no greater than the fishing mortality rates associated with maximum sustainable yield. The need for the rule is to satisfy the 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, pursuant to the authority of the Western and Central Pacific Fisheries Commission Implementation Act. Thus, the rule is limited to an immediate and focused objective and it does not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration.

15) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: No. As stated in the response to #14, the purpose of the rule is to implement specific conservation and management measures and the need for the rule is to satisfy the international obligations of the United States as a member of the WCPFC. As such, the rule would not be expected to violate any laws or requirements imposed for the protection of the environment.

16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: No. See the response to #11 above for a discussion of cumulative effects. The overall cumulative impacts to the WCPO stocks of bigeye tuna, skipjack tuna, and yellowfin tuna are not expected to be substantial.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting SEA and RIR prepared for the rule "Restrictions on the Use of Fish Aggregating Devices in Purse Seine Fisheries for 2015," it is hereby determined that the proposed action will not significantly impact the quality of the human environment as described above and in the supporting SEA. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

Regional Administrator
Pacific Islands Regional Office

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Date