U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Pacific Islands Regional Office
1845 Wasp Blvd., Bldg 176
Honolulu, Hawaii 96818
(808) 725-5000 • Fax: (808) 725-5215

Finding of No Significant Impact

Fishing Effort and Catch Limits and other Restrictions and Requirements
RIN 0648-BE84

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 Programmatic Environmental Assessment (PEA) prepared pursuant to the requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. § 4321 et seq.) titled "Programmatic Environmental Assessment for the Implementation of Decisions of the Western and Central Pacific Fisheries Commission on Management of Tropical Tunas in the Western and Central Pacific Ocean from 2015-2020."

Background

At its Eleventh Regular Session, in December 2014, 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) 2014-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean." CMM 2014-01 is generally applicable for the 2015-2017 calendar year period, and only contains minor modifications to CMM 2013-01, the predecessor CMM for the three main tropical tunas (skipjack tuna (*Katsuwonus pelamis)*, yellowfin tuna (*Thunnus albacares)*, and bigeye tuna (*Thunnus obesus*)). CMM 2014-01 includes provisions for purse seine vessels and longline vessels. The CMM's provisions for purse seine vessels include limits on the allowable level of fishing effort, restrictions on the use of fish aggregating devices (FADs), and a general provision not to increase catches of yellowfin tuna. The CMM's provisions for longline vessels include catch limits for bigeye tuna and a general provision not to increase catches of yellowfin tuna.

Based on the Commission's CMMs on tropical tunas from 2008 through 2014,[1] NMFS believes that the Commission has established a general pattern of management for tropical tunas and that provisions similar or identical to the provisions in CMM 2014-01 will likely be adopted by the Commission for the reasonably foreseeable future, which, for the purposes of the PEA is through the end of 2020.[2] NMFS believes that a broad programmatic approach to analyzing NMFS' domestic implementation of the

[1] See CMM 2008-01, CMM 2011-01, CMM 2012-01, CMM 2013-01 and CMM 2014-01, available on the WCPFC Web site at https://www.wcpfc.int/.

[2] NMFS has chosen 2015 through the end of 2020 as the timeframe for analysis in this PEA, because generally NEPA analyses more than five years old need to be reexamined to determine whether supplemental information is needed (see Council on Environmental Quality. 1981. *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*. 46 FR 18026 (March 23, 1981)).

Commission's CMMs on tropical tunas in the western and central Pacific Ocean (WCPO) is appropriate, as it would help inform the public and provide timely analyses about upcoming agency actions as far in advance as possible. The PEA analyzes NMFS' projected domestic implementation of the Commission's conservation and management measures on tropical tunas in the WCPO, pursuant to the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA; 16 USC 6901 *et seq.*), from 2015 through the end of 2020.

NMFS is promulgating a rule that would establish a framework process to put into place specific fishing effort limits, catch limits, and other restrictions and requirements in U.S. fisheries for highly migratory species in the Commission's area of competence (Convention Area) to implement particular decisions of the Commission. As part of the same rulemaking, NMFS is proposing to use the framework process to specify limits for 2015 regarding tropical tunas for the U.S. purse seine fishery operating in the WCPO. These limits are within the range of alternatives analyzed in the PEA. NMFS has determined that the establishment of the proposed framework process qualifies to be categorically excluded from further NEPA review. The rule also includes implementation of several other unrelated regulatory matters that are the subject of a separate categorical exclusion document. All of the elements of the rule would implement WCPFC decisions pursuant to the authority of the WCPFCIA.

The limits that NMFS is establishing in the rule include specifications for 2015, which would be issued to implement the provisions of the CMM 2014-01. The provisions of CMM 2014-01 that would be implemented in these proposed specifications include restrictions on the use of FADs by purse seine vessels.

CMM 2014-01 requires Commission members to implement certain restrictions on the use of FADs by purse seine vessels between the latitudes of 20° N. and 20° S. in the Convention Area. First, setting on FADs and certain other uses of FADs are to be prohibited from July through September in each of 2015, 2016, and 2017. In addition, WCPFC members have a choice of extending those three-month "FAD prohibition periods" for a fourth month, October, or imposing quantitative annual limits on purse seine sets on FADs (in addition to the three-month FAD closures). For the United States, the limit would be 2,522 FAD sets per year. Based on analysis of these two options, NMFS anticipates that extending the FAD closures through October (i.e., a four-month FAD closure each year) would cause less severe economic impacts on the U.S. purse seine fleet and its participants than the option of a three-month FAD closure in combination with a limit of 2,522 FAD sets each year. Thus, NMFS is proposing to implement the former option as the proposed specifications for 2015. The July through September FAD prohibition period has already been implemented in a separate rule (see 79 FR 71327; final rule published December 2, 2014).

The 2015 specifications comprise the proposed action addressed in this FONSI. As indicated above, these limits are within the range of alternatives analyzed in the PEA.

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 4.5 of the PEA, the proposed action could lead to some direct and indirect minor beneficial impacts on the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna. The FAD setting prohibition period could lead to some beneficial direct and indirect effects on the stocks by reducing fishing mortality on bigeye tuna and also perhaps smaller yellowfin and skipjack tuna during the prohibition period. Although the fleet could target large unassociated yellowfin tunas during the prohibition periods, any potential increased catch of larger yellowfin tuna would be ameliorated by reduced catches of smaller yellowfin tuna during the prohibition period, 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 larger yellowfin tuna available to unassociated fishing. The effects of the FAD setting prohibition period on skipjack tuna are unknown. However, these beneficial effects would be relatively small, because the fishing patterns and practices of fleets would not change substantially under the proposed action from the No-Action Alternative, and, as described in Chapter 3 of the PEA, because many other factors contribute to the status of the stocks (fishing activities by non-U.S. fleets, oceanographic conditions, etc.).

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

Response: No. Section 4.7 of the PEA discusses the potential impacts to non-target fish species from the proposed action. The proposed action could cause some change in the amount and type of non-target fish species caught by the U.S. WCPO purse seine fleet. Direct impacts to 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 shift in fishing to unassociated sets during the implementation of the purse seine FAD setting restrictions. Indirect or long-term effects would include the greater potential for adverse effects to the stocks of non-target fish species that experience increased fishing mortality and reduced potential for adverse effects to the stocks of non-target fish species that experience decreased fishing mortality. Because the U.S. WCPO purse seine fleet does not generally catch large amounts of other non-target fish species (see Chapter 3 of the PEA), the overall direct and indirect effects on non-target fish species under the proposed action would be expected to be minor or negligible.

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 Section 4.8 of the PEA, the proposed action would not cause any adverse impacts to areas designated as EFH or Habitat Areas of Potential Concern (HAPC) under MSA provisions, or to ocean and coastal habitats. Such resources would not be affected because the potential changes in fishing patterns 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. Also, because any effects to fish stocks would be minor or negligible, as discussed above, any pelagic fish habitat designated as EFH, including the water column, or HAPC, would not be expected to experience any substantial effects – either beneficial or adverse – from implementation of the proposed action, as the small effects on the stocks would be unlikely to lead to any indirect effects to fish habitat (e.g., an increase in predator or prey leading to trophic interactive effects leading to effects on habitat).

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

Response: No. There are no identified potential effects on public health and safety from implementation of the proposed action. Thus, substantial adverse impacts on public health or safety are not anticipated to result from promulgation of the rule.

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. As stated in Section 4.8 of the EA, the proposed action would not be expected to adversely affect species listed as endangered or threatened under the Endangered Species Act (ESA), their critical habitat or marine mammals.

Based on incomplete and unverified observer data, the U.S. purse seine fishery has 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. NMFS is continuing to collect and analyze data. Data also indicates 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. The Final Biological Opinion and Incidental Take Statement for the U.S. purse seine fishery for effects to ESA-listed turtles and marine mammals was issued on November 1, 2006, concluding that continued operation of the fishery is not likely to jeopardize the continued existence of the listed turtles and marine mammals. As stated in Chapter 3 of the PEA, in a memorandum dated October 21, 2014, prepared under the authority of ESA section 7(a)(2) and (d), NMFS analyzed the effects of the U.S. WCPO purse seine fishery on the scalloped hammerhead shark pending completion of formal ESA Section 7 consultation during the 2015 calendar year. Based on the best available information, NMFS determined that risk of the continued operation of the U.S. WCPO purse seine fishery on the Indo-West Pacific DPS of the scalloped hammerhead shark during calendar year 2015 is negligible and not likely to jeopardize the continued existence of the DPS. NMFS further noted that the purse seine fishery remains subject to management under regulations that may be amended to ensure consistency with ESA and other applicable laws.

Overall, the direct and indirect effects to protected resources from the implementation of the proposed action would likely be negligible. To the extent that there is a shift in fishing patterns (i.e., from FAD sets to unassociated sets), any effects in terms of interactions with protected resources would be small compared to typical year-to-year variations in interactions with species driven by changing oceanic and economic conditions. Thus, the proposed action would not cause any effects to ESA-listed species that have not been addressed in prior or ongoing consultations and would not cause additional impacts to marine mammals protected under the Marine Mammal Protection Act.

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 purse seine FAD setting restrictions of CMM 2014-01 for 2015 for the U.S. WCPO purse seine fleet, in order to contribute to the underlying objectives of CMM 2014-01 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 Chapter 3 of the PEA, 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 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 a significant source 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 stocks of bigeye, skipjack, and yellowfin tuna would be large enough to impact the marine ecosystem. Overall, the proposed action would not be expected to cause substantial effects on biodiversity and ecosystem function.

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

Response: No. *The Regulatory Impact Review for a Rule to Implement Decision of the Western and Central Pacific Fisheries Commission for: Fishing Effort and Catch Limits and other Restrictions and Requirements* (RIR) sets forth the potential economic impacts from implementation of the proposed action. As discussed throughout the PEA, the direct effects on the fisheries would not lead to substantial effects on the human environment – at the most, there could be some minor beneficial impacts on the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna when compared to operation of the fisheries absent the purse seine FAD setting restrictions, with the effects on other resources in the affected environment being none or very minor, and any adverse economic impacts interrelated with these environmental effects are not likely to be substantial.

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

Response: No. This proposed action would implement purse seine FAD setting restrictions that are similar or identical to management measures implemented in these fisheries from 2009-2014. The effects of the proposed action on fishing patterns and practices generally could lead to some minor beneficial impacts on the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna in comparison to operation of the fisheries under the No-Action Alternative, 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).

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 3.8.3 of the PEA, there are several National Wildlife Refuges and National Monuments in the affected environment. However, as stated in Section 4.8 of the PEA, these resources would not be affected because the potential changes in fishing patterns 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 and longline fishing do not involve contact with the seafloor. In addition, as discussed in Section 3.8 of the PEA, commercial fishing is already prohibited in the National Monuments, pursuant to the 2009 and 2014 Presidential Proclamations.

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

Response: No. This proposed action would implement purse seine FAD setting restrictions for 2015 that are similar or identical to management measures implemented in these fisheries from 2009-2014. As described throughout the PEA, 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 provisions of CMM 2014-01 in order to contribute to the underlying objectives of CMM 2014-01 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 primary effects of the proposed action on the human environment are that there could be some minor beneficial impacts on the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna (when compared to operation of the fisheries absent the purse seine FAD setting restrictions) from purse seine fishing shifting to unassociated sets due to FAD setting restrictions and from decreased fishing for bigeye tuna and yellowfin tuna if the longline bigeye tuna catch limits are reached and prohibitions are put into place in a given calendar year. 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 PEA, based on all information to date, the proposed action would not be expected to lead to cumulative impacts on the status of the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna, and no significant cumulative impacts on resources in the human environment, including other target or non-target fish species, protected resources, or minority or low-income populations, 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 4.8 of the PEA, such resources would not be affected because the potential changes in fishing patterns 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. Shipwrecks would be the only known cultural objects potentially within the affected environment. However, purse seine fishing operations do not come into contact with the seafloor, so the operations of the U.S. purse seine fleet would not be expected to affect any material from shipwrecks, which typically rests on ocean bottoms. 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. The primary effects of the proposed action on the U.S. WCPO purse seine fishery are that the FAD setting restrictions would shift fishing effort from FAD sets to unassociated sets. These effects would be expected to result in the introduction or spread of a nonindigenous species since the affected vessels would not be entering 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 specific provisions of CMM 2014-01 for the U.S. WCPO purse seine fleet operating in the Convention Area, in order to contribute to the underlying objectives of CMM 2014-01 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 proposed action 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

proposed action 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 obligations of the United States as a member of the Commission. 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 #2, 5, and 11 above. The overall cumulative impacts to the resources in the affected environment, including the target or non-target species, are not expected to be substantial.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting PEA and RIR prepared for the rule "Fishing Effort and Catch Limits and other Restrictions and Requirements," 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 PEA. 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.

SEP 11 2015

Regional Administrator
Pacific Islands Regional Office

Date