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Finding of No Significant Impact

Fishing Restrictions regarding the Oceanic Whitetip Shark, the Whale Shark, and the Silky Shark; RIN 0648-BD44

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 Environmental Assessment (EA) 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-BD), "Fishing Restrictions regarding the Oceanic Whitetip Shark, the Whale Shark, and the Silky Shark."

Background

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 for Oceanic Whitetip Shark" (CMM 2011-04) to address recent declines in catch rates and size of oceanic whitetip sharks (*Carcharhinus longimanus*) in the longline and purse seine fisheries. The WCPFC also adopted "Conservation and Management Measure for Protection of Whale Sharks from Purse Seine Fishing Operations" (CMM 2012-04) in response to concerns about the potential impacts of purse seine fishing operations on the sustainability of the whale shark (*Rhincodon typus*) and "Conservation and Management Measure for Silky Sharks" (CMM 2013-08) to address fisheries impacts to silky sharks (*Carcharhinus falciformis*) in the western and central Pacific Ocean (WCPO). The National Marine Fisheries Service (NMFS) is promulgating a rule to implement the applicable provisions of CMM 2011-04, CMM 2012-04, and CMM 2013-08 for U.S. fishing vessels used for commercial fishing for highly migratory species (HMS) in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). The regulations for oceanic whitetip sharks and silky sharks would prohibit the retention, transshipment, storage, or landing of either of the two species and would require the release of any oceanic whitetip shark or silky shark as soon as possible after it is caught with as little harm to the shark as possible. The regulations for whale sharks would prohibit setting a purse seine on a whale shark and would specify certain measures to be taken and reporting requirements in the event a whale shark is encircled in a purse seine net.

NMFS prepared an EA to analyze the impacts of the proposed rule on the human environment. The EA analyzed the proposed action (Alternative B), as well as the No-Action Alternative (Alternative A) and concluded that the proposed action would not have substantial effects on resources in the human environment.

The six elements of the proposed action are as follows:

1. Prohibit the crew, operator, and owner of the fishing vessel from retaining on board, transshipping, storing, or landing any part or whole carcass of an oceanic whitetip shark or silky shark that is caught in the Convention Area.
2. Require the crew, operator, and owner of the fishing vessel to release any oceanic whitetip shark or silky shark caught in the Convention Area as soon as possible after the shark is caught and brought alongside the vessel, and to use reasonable steps for its safety, without compromising the safety of any persons.
3. Allow observers to collect samples of oceanic whitetip sharks and silky sharks that are dead when brought alongside the fishing vessel in the Convention Area by requiring the crew, operator, and owner of the vessel to allow and assist a NMFS observer or WCPFC observer to collect samples from dead oceanic whitetip sharks or silky sharks, if requested to do so by the observer, notwithstanding the two elements described above.
4. Prohibit the crew, operator, and owner of the fishing vessel from setting or attempting to set a purse seine on or around a whale shark if the animal is sighted prior to the commencement of the set or the attempted set. This element would apply on the high seas and in exclusive economic zones (EEZs) in the Convention Area, except for the EEZs of the Parties to the Nauru Agreement (PNA)[1].
5. Require the crew, operator, and owner of the fishing vessel to release any whale shark that is encircled in a purse seine net in the Convention Area, and to take reasonable steps for its safe release, without compromising the safety of any persons. This element would apply on the high seas and in EEZs in the Convention Area, including the EEZs of the PNA.
6. Require the owner and operator of the fishing vessel that encircles a whale shark with a purse seine in the Convention Area to ensure that the incident is recorded by the end of the day on the catch report form (i.e., the Regional Purse Seine Logsheet maintained pursuant to 50 CFR § 300.34(c)(1)) in the format specified by the NMFS Pacific Islands Regional Administrator. This element would apply on the high seas and in EEZs in the Convention Area, including the EEZs of the PNA.

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 fisheries that would be affected by the proposed action include albacore, bigeye tuna, blue marlin, mahimahi, skipjack tuna, swordfish, yellowfin tuna, and wahoo. As stated in Section 4.14 of the EA, the oceanic whitetip shark and silky shark elements of the proposed rule under the proposed action could cause some minor changes in the species composition of retained catch due to the increase in discards leading to an increase in hold space available for other species, at least in

[1] The PNA currently includes the following countries: Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, and Tuvalu.

the longline and troll fisheries. Thus, it is possible that there could be some increase in effort for fishing for the target stocks and an increase in the amount of target stocks caught and retained. However, given that only a small number of oceanic whitetip sharks and silky sharks are currently retained, it is unlikely that any increase in hold space as a result of the proposed rule would be large enough to substantially affect the fishing practices of the affected fleets. Thus, though there is some small potential for increased fishing effort on target stocks, it is more likely that the rule would not lead to an increase in fishing effort and would result in no direct or indirect effects to target stocks. Moreover, the proposed rule could lead to some minor changes in terms of time spent on fishing or other activities, if increased handling time is needed to release sharks that are caught, or if vessel owners/operators/crew need to wait or change locations to make sets and spend time reporting on whale shark encirclements. This decrease in fishing time would counteract the possible increase in fishing effort.

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

Response: No. Section 4.11 of the EA describes the effects of the proposed action on the oceanic whitetip shark and the silky shark. The oceanic whitetip shark and silky shark elements of the proposed rule would be expected to cause only minor effects on the abundance of oceanic whitetip shark and the silky shark in the WCPO. The small number of these sharks that are currently retained in the fisheries would be expected to be discarded under the first element of the proposed rule. A recent study of post release survival rates of the silky shark in WCPO purse seine fisheries demonstrated that at least some silky sharks survive post release. No specific studies were identified on the post release survival rates of the oceanic whitetip shark. However, based on the information available on post release survival of sharks in general and the study for post release survival rates of silky sharks, it can be expected that at least some oceanic whitetip sharks and silky sharks that are released to comply with the first element of the proposed rule would survive, with the rates of survival for silky sharks likely dependent on when the shark is released. Comparing the small number of these types of sharks currently caught and retained in the U.S. fisheries in the WCPO compared to the number of these types of sharks caught overall in WCPO fisheries– only very minor direct effects on the size of the populations of the oceanic whitetip shark or the silky shark as a result of the first element of the proposed rule would be expected. Over time, the number of sharks that could survive in response to the first element of the proposed rule could have some minor beneficial contribution to the overall status of the stocks (i.e., a minor increase in the size of the stock), so there could be some minor beneficial indirect effects to the stocks as a result of the proposed rule.

The second element of the proposed rule could also have some minor beneficial direct and indirect effects on abundance and the overall status of the stocks (i.e., a minor increase in the size of the stock) of the oceanic whitetip shark and the silky shark. The specific methods currently used by the crew, operators, and owners of vessels to release oceanic whitetip sharks and silky sharks are unknown, so implementation of the requirements to release the sharks as soon as possible and to ensure that reasonable steps are taken to ensure the safe release of the sharks may lead to the crew, operators, and owners to take more precautions when releasing the sharks. This increase in precaution could in turn increase the post release survival of the sharks. Comparing the small number of these types of sharks currently caught and retained in the U.S. fisheries in the WCPO compared to the number of these types of sharks caught overall in WCPO fisheries, only minor direct effects on the size of the populations of the oceanic whitetip shark or the silky shark as a result of the second element of the proposed rule would be expected. Over time, the number of sharks that could survive in response to the second element of the proposed rule could have some minor beneficial contribution to the overall status of the stocks (i.e., a minor increase in the size of the stock), so there could be some minor beneficial indirect effects to the stocks as a result of the proposed rule.

As stated in Section 4.12 of the EA, should the first whale shark element of the proposed rule lead to any reduction in interactions with whale sharks in the fishery (it is unclear how many interactions currently take place after the whale shark is sighted prior to the commencement of the set), there is a small potential for minor beneficial direct and indirect effect on the whale shark. If some of the interactions that currently result in mortalities are avoided as a result of the proposed rule, then there could be minor direct effects on the whale shark. Over time, this reduction in mortalities could have some minor beneficial indirect effects on the overall status of the stock (i.e., a minor increase in the size of the stock).

The second whale shark element of the proposed rule could have some direct and indirect, beneficial effects on the whale shark. The specific methods currently used by the crew, operators, and owners of U.S. purse seine vessels to release whale sharks are not definitively known, so implementation of the requirements to release the sharks as soon as possible and to ensure that reasonable steps are taken to ensure the safe release of the sharks may lead to the crew, operators, and owners to take more precautions when releasing the sharks, thus increasing the number of whale sharks that are alive upon release. As stated in Chapter 3 of the EA, no specific studies were identified on the post release survival rates of the whale shark, however, this increase in precaution could also lead to an increase in the post release survival of the sharks.

As for other non-target stocks, Section 4.15 of the EA indicates that any effects on such stocks would be minor or negligible. Any increase in effort for target species could lead to additional catch of non-target stocks, but as stated in the response to question 1, above, it is more likely that the rule would not lead to an increase in fishing effort and would result in no direct or indirect effects to target 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 Section 4.16 of the EA, 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. Any potential minor increase in fishing effort would be counteracted by a potential minor decrease in fishing effort and would not be expected to cause impacts to EFH or HAPC or ocean or coastal habitats.

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

Response: No. As stated above in the description of the elements of the proposed rule, the regulations include explicit language taking into consideration the safety of all persons when releasing oceanic whitetip sharks, silky sharks, and whale sharks. The other elements of the proposed rule would not be expected to lead to safety concerns.

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 4.16 of the EA, the six elements of the proposed rule under the proposed action could cause some minor effects on the operations of the affected fisheries, but would not be expected to lead to substantial changes in fishing patterns and practices. The oceanic whitetip shark and silky shark elements of the proposed rule could cause some minor changes in the species composition of retained catch as well as some minor changes in terms of time spent on fishing or other activities, if increased handling time is needed to release sharks that are caught. The whale shark elements of the proposed rule could also cause some minor changes in terms of time spent on fishing or other activities,

since vessel owners/operators/crew may need to wait or change locations to make sets, increase handling times to release sharks that are caught, and spend time reporting on whale shark encirclements.

To the extent that there is an increase in fishing effort, there would be some small potential for increased interactions with protected species. However, given that only a small number of oceanic whitetip sharks and silky sharks are currently retained, it is unlikely that the increase in hold space as a result of the proposed rule would be large enough to substantially affect the fishing practices of the affected fleets. Thus, though there is some small potential for increased fishing effort on target stocks, it is more likely that the rule would not lead to an increase in fishing effort and would result in no direct or indirect effects to target stocks, and consequently no direct or indirect effects to protected species. Moreover, the proposed rule could lead to some minor changes in terms of time spent on fishing or other activities, if increased handling time is needed to release sharks that are caught, or if vessel owners/operators/crew need to wait or change locations to make sets and spend time reporting on whale shark encirclements. This decrease in fishing time would counteract the possible increase in fishing effort.

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. As stated in Section 4.17 of the EA, the proposed rule could lead to some minor beneficial direct and indirect effects on the oceanic whitetip shark and the silky shark in the WCPO, as well as a potential reduction in whale shark mortalities caused by purse seine fishing operations in the WCPO, which could in turn lead to some minor beneficial direct and indirect effects to the whale shark in the WCPO. As discussed in Chapter 3 of this EA, the oceanic whitetip shark, the silky shark, and the whale shark are all apex predator species, so indirect effects on these species could in turn lead to indirect trophic interactive effects that could affect the ecosystem over time. Given the anticipated minor effects of the proposed rule on the three sharks, any effects on the ecosystem also would be expected to be minor. The types of effects to the ecosystem (e.g., increases or decreases to prey or other species) cannot be predicted at this time as there are too many unknowns and variables that would need to be taken into consideration – for example, the diet of the three shark species could change over time in response to as yet unknown circumstances.

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

Response: No. As described above, the six elements of the proposed rule under the proposed action could cause some minor effects on the operations of the affected fisheries, but would not be expected to lead to substantial changes in fishing patterns and practices. The oceanic whitetip shark and silky shark elements of the proposed rule could cause some minor changes in the species composition of retained catch as well as some minor changes in terms of time spent on fishing or other activities, if increased handling time is needed to release sharks that are caught. The whale shark elements of the proposed rule could also cause some minor changes in terms of time spent on fishing or other activities, since vessel owners/operators/crew may need to wait or change locations to make sets, increase handling times to release sharks that are caught, and spend time reporting on whale shark encirclements. As stated in the Regulatory Impact Review for the proposed rule, these effects could lead to neutral or very small positive benefits that the United Staets can potentially enjoy through the maintenance of populations of these sharks, though these benefits would be partially offset by losses to consumers and producers and public sector expenditures. Overall, these costs would be expected to be small.

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

Response: No. As described above, the six elements of the proposed rule under the proposed action could cause some minor effects on the operations of the affected fisheries, but would not be expected to lead to

substantial changes in fishing patterns and practices. The oceanic whitetip shark and silky shark elements of the proposed rule could cause some minor changes in the species composition of retained catch as well as some minor changes in terms of time spent on fishing or other activities, if increased handling time is needed to release sharks that are caught. The whale shark elements of the proposed rule could also cause some minor changes in terms of time spent on fishing or other activities, since vessel owners/operators/crew may need to wait or change locations to make sets, increase handling times to release sharks that are caught, and spend time reporting on whale shark encirclements. Moreover, the EA was made available during the public comment period for the proposed rule and the 41 comments submitted on the proposed rule did not raise any issues regarding the information in the EA.

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 EA, there are several National Wildlife Refuges and National Monuments in the affected environment. However, these resources would not be affected because any potential minor increase in fishing effort would be counteracted by a potential minor decrease in fishing effort.

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 EA, 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 rule is to implement the provisions of CMM 2011-04 and CMM 2013-08 for U.S. fishing vessels fishing for HMS in the Convention Area and the provisions of CMM 2012-04 for U.S. purse seine fishing vessels fishing in the Convention Area. The need for the proposed rule is to satisfy the obligations of the United States as member of the WCPFC. As described above, the six elements of the proposed rule under the proposed action could cause some minor effects on the operations of the affected fisheries, but would not be expected to lead to substantial changes in fishing patterns and practices. The oceanic whitetip shark and silky shark elements of the proposed rule could cause some minor changes in the species composition of retained catch as well as some minor changes in terms of time spent on fishing or other activities, if increased handling time is needed to release sharks that are caught. The whale shark elements of the proposed rule could also cause some minor changes in terms of time spent on fishing or other activities, since vessel owners/operators/crew may need to wait or change locations to make sets, increase handling times to release sharks that are caught, and spend time reporting on whale shark encirclements. 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 some minor beneficial direct and indirect effects on the oceanic whitetip shark, the silky shark, and the whale shark in the WCPO. The other identified past, present, and reasonably foreseeable future actions could have some effects on the fishing patterns and practices of the affected fisheries, and to the extent that fishing effort is increased, there could be an increased risk of interaction with the oceanic whitetip shark, the silky shark, and the whale shark. To the extent fishing effort is decreased, there could be a decreased risk of interaction with the oceanic whitetip shark, the silky shark, and the whale shark.

Given that the objective of the other actions is sustainable management of fisheries and that the majority of the other actions would constrain fishing effort to some degree, it is expected that the overall cumulative impacts from the identified past, present, and reasonably foreseeable future actions to the oceanic whitetip shark, the silky shark, and the whale shark in the WCPO would be beneficial. The degree of beneficial impacts would be dependent on the effectiveness of the management measures, and as such, cannot be predicted at this time. However, as the majority of the other actions are not specifically focused on the conservation and management of the oceanic whitetip shark, the silky shark, and the whale shark, it is expected that the cumulative impacts to these sharks in the WCPO from the proposed action and the other identified past, present, and reasonably foreseeable actions would not be significant. As discussed in Chapter 4 of the EA, the likely effects on these sharks from the proposed action would be minor and beneficial direct and indirect effects, and it is likely that any effects from the other identified actions would be similar. As described in Chapter 3 of the EA, fishing activities are just one of many threats to shark populations worldwide.

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 4.16 of the EA, such resources would not be affected because any effects would not be expected in areas where these resources occur. The six elements of the proposed rule under the proposed action could cause some minor effects on the operations of the affected fisheries, but would not be expected to lead to substantial changes in fishing patterns and practices. The oceanic whitetip shark and silky shark elements of the proposed rule could cause some minor changes in the species composition of retained catch as well as some minor changes in terms of time spent on fishing or other activities, if increased handling time is needed to release sharks that are caught. The whale shark elements of the proposed rule could also cause some minor changes in terms of time spent on fishing or other activities, since vessel owners/operators/crew may need to wait or change locations to make sets, increase handling times to release sharks that are caught, and spend time reporting on whale shark encirclements. However, any potential minor increase in fishing effort would be counteracted by a potential minor decrease in fishing effort.

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

Response: No. The six elements of the proposed rule under the proposed action could cause some minor effects on the operations of the affected fisheries, but would not be expected to lead to substantial changes in fishing patterns and practices. The oceanic whitetip shark and silky shark elements of the proposed rule could cause some minor changes in the species composition of retained catch as well as some minor changes in terms of time spent on fishing or other activities, if increased handling time is needed to release sharks that are caught. The whale shark elements of the proposed rule could also cause some minor changes in terms of time spent on fishing or other activities, since vessel owners/operators/crew may need to wait or change locations to make sets, increase handling times to release sharks that are caught, and spend time reporting on whale shark encirclements. However, any potential minor increase in fishing effort would be counteracted by a potential minor decrease in fishing effort. None of these effects would be expected to result in the introduction or spread of a nonindigenous species since the vessels in the fleets 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 rule is to implement the provisions of CMM 2011-04 and CMM 2013-08 for U.S. fishing vessels fishing for HMS in the Convention Area and the provisions of CMM 2012-04 for U.S. purse seine fishing vessels fishing in the Convention Area. The need for the rule is to satisfy the obligations of the United States as a Contracting Party to the Convention, 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 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 oceanic whitetip shark, the silky shark, and the whale shark are not expected to be substantial.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting EA and Regulatory Impact Review prepared for the rule "Fishing Restrictions regarding the Oceanic Whitetip Shark, the Whale Shark, and the Silky Shark," 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 EA. 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.

JAN 1 4 2015

Regional Administrator
Pacific Islands Regional Office

Date