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Finding of No Significant Impact

The National Marine Fisheries Service (NMFS) prepared this Finding of No Significant Impact (FONSI) according to the following guidance:

- National Oceanic and Atmospheric Administration’s (NOAA) Administrative Order (NAO) 216-6A (April 22, 2016) – Compliance with the National Environmental Policy Act, Executive Orders 12114 (Environmental Effects Abroad of Major Federal Actions), 11988 and 13690 (Floodplain Management), and 11990 (Protection of Wetlands); and its associated Companion Manual (January 13, 2017); and
- Council on Environmental Quality (CEQ) significance criteria at 40 CFR 1508.27(b).

Background

The National Marine Fisheries Service (NMFS) is undertaking a rulemaking to implement recent decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). The rule would implement specific provisions of Conservation and Management Measure (CMM) 2018-01, “Conservation and Management Measure for Bigeye, Yellowfin, and Skipjack Tuna in the Western and Central Pacific Ocean,” adopted in December 2018, for purse seine fishing vessels.

CMM 2018-01 is similar in many respects to its predecessor WCPFC conservation and management measures for tropical tunas, and NMFS has already implemented most provisions of CMM 2018-01 through prior rulemaking. The rule would implement the provisions in CMM 2018-01 regarding limits on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone (EEZ) and on the high seas between the latitudes of 20° N. and 20° S. in the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean’s (Convention) area of application (Convention Area). The rule would establish a combined limit of 1,616 fishing days for 2019 for the Effort Limit Area for Purse Seine (or ELAPS), which comprises the areas of the high seas and U.S. EEZ between 20° N. latitude and 20° S. latitude in the Convention Area and a combined limit of 1,828 for 2020 and future years. The limits would be implemented to remain effective until they are replaced or amended.

CMM 2018-01 also includes new provisions for fish aggregating device (FAD) management for purse seine vessels. New FAD management provisions in CMM 2018-01 include: (1) specific FAD design requirements to reduce the risk of entanglement of sharks, sea turtles and other



species; and (2) language to clarify that sets on small amounts of plastic or small garbage that do not have a tracking buoy attached are not considered to be FAD sets during the prohibition periods in 2019 for setting on FADs. The FAD design requirements do not need to go into effect until January 1, 2020, as specified in CMM 2018-01, and they would be implemented in a separate rulemaking (RIN 0648-BI79). NMFS is not revising the current regulatory definition of FAD found at 50 CFR 300.211 to clarify that “sets on small amounts of plastic or garbage that do not have tracking buoys are not considered FADs,” because NMFS has never interpreted the current definition in this manner.

In 2015, NMFS published a programmatic environmental assessment 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* (hereafter 2015 PEA). The 2015 PEA analyzed implementation of purse seine fishing effort limits and FAD management measures and included a wide range of alternatives as part of the analysis. The 2015 PEA included analysis of 10 action alternatives as well as the No-Action Alternative.¹

Each action alternative included sub-alternatives for implementing the purse seine fishing effort limits. NMFS identified the reasonable range of sub-alternatives in the 2015 PEA as follows:

- 1) Separate annual limits of 432 fishing days on the high seas and 25 fishing days in the U.S. EEZ for each of the years 2015-2020. These numbers are based on the lowest per vessel effort levels in the 1997-2013 period (which occurred in 2010), adjusted for a maximum of 40 vessels in the fleet, which is the maximum number of vessel licenses currently authorized.
- 2) Separate annual limits of 1,270 fishing days on the high seas and 558 fishing days in the U.S. EEZ
- 3) A combined annual limit of 1,828 fishing days in the ELAPS.²
- 4) A combined annual limit of 3,898 fishing days in the ELAPS. This number is based on the highest per-vessel effort levels on the high seas and in the U.S. EEZ in the 1997-2010 period (which occurred in 2005 for the high seas and in 1997 for the U.S. EEZ), summed and adjusted for a maximum of 40 vessels in the fleet.

The analyses in the 2015 PEA indicates that the primary difference between the various sub-alternatives for implementing the U.S. purse seine fishing effort limit is the length of any fishery closure, due to the potential for the effort limits to be reached at different times per year. The limit would be expected to be reached later in the year if the total number of available fishing days is more. Also, if there is a separate limit for the high seas and a separate limit for the U.S. EEZ, one of the limits could be reached earlier in the year than the other limit (i.e., the high seas

¹ Under the No-Action Alternative, NMFS would not implement WCPFC decisions on tropical tunas, and thus, the U.S. purse seine fishing effort limits for 2019 and 2020 would not go into effect.

² The combined high seas and U.S. EEZ area where the fishing limits would apply – the high seas and the U.S. EEZ within the Convention Area, between the latitudes of 20° N. and 20° S – is referred to in U.S. fisheries regulations as the Effort Limit Area for Purse Seine, or ELAPS.

could be closed to fishing before the U.S. EEZ is closed to fishing or vice versa). Only a limited number of vessels in the fleet are authorized to fish in the U.S. EEZ and some of these vessels deliver to canneries while others transship. So if the limit on the high seas is reached first, the effects would be the same for the majority of the vessels in the fleet; the vessels authorized to fish in the U.S. EEZ may fish harder in the U.S. EEZ than they otherwise would. If the limit in the U.S. EEZ is reached first, the vessels authorized to fish in the U.S. EEZ may fish harder on the high seas than they otherwise would. The 2015 PEA concluded that because the fleet expends the majority of its fishing effort in areas outside of the ELAPS, there may be no overall change in the amount of fishing effort of the fleet in 2015-2020 compared to the No-Action Alternative under any of the action alternatives.

The 2015 PEA also concluded that because many other factors contribute to the status of the stocks (fishing activities by non-U.S. fleets, oceanographic conditions, etc.), the direct and indirect effects to bigeye, yellowfin, and skipjack tuna from implementation of any of the action alternatives would not be expected to be substantial. The 2015 PEA also concluded that none of the action alternatives would cause substantial effects to other resources in the affected environment

The 2015 PEA also included analysis of FAD management measures for U.S. purse seine vessels. These include FAD setting prohibition periods, FAD set limits, and high seas FAD closures. The provisions in CMM 2018-01 regarding FAD prohibition periods have already been implemented. CMM 2018-01 included new language clarifying that sets on small amounts of plastic or garbage that do not have a tracking buoy are not considered to be FAD sets during the prohibition periods. The current definition of FAD at 50 CFR 300.211 states that FAD means “any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any object used for that purpose that is situated on board a vessel or otherwise out of the water,” excluding a vessel. NMFS has not in the past, and continues not to, interpret the current regulatory FAD definition to include “sets on small amounts of plastic or garbage that do not have a tracking buoy” during prohibition periods. Because the CMM’s language is consistent with NMFS’s interpretation of the existing regulatory definition, NMFS is not revising the existing FAD definition found at 50 CFR 300.211. Moreover, because NMFS’s current interpretation of the existing regulatory definition is consistent with the revised CMM language, NMFS does not anticipate any changes to the type, location, or number of FAD sets. Consequently, the CMM’s new language is not considered further in this document.

NMFS prepared a supplemental environmental assessment titled *Supplemental Environmental Assessment for a Rule to Implement Decisions of the Western and Central Pacific Fisheries Commission for: Fishing Restrictions in Purse Seine Fisheries* (hereafter 2019 SEA) that takes into consideration the new information available since publication of the 2015 PEA and focuses on analysis of the rule to implement the purse seine provisions of CMM 2018-01 in calendar years 2019 and 2020. The SEA concludes that based on the analysis in the 2015 PEA, as supplemented by this document, promulgation of the rule to implement the purse seine fishing effort limits for the United States specified in CMM 2018-01 would not cause substantial environmental effects on resources in the affected environment in years 2019 and 2020. As stated above, the proposed rule would implement the purse seine effort limits to remain effective until they are replaced or amended. NMFS understands that the analysis in the 2015 PEA and

2019 SEA would need to be supplemented should the elements of the rule remain effective for more than two years.

Significance Analysis

The Council on Environmental Quality (CEQ) Regulations state that the determination of significance using an analysis of effects requires examination of both context and intensity, and lists ten criteria for intensity (40 CFR 1508.27). In addition, the Companion Manual for National Oceanic and Atmospheric Administration Administrative Order 216-6A provides sixteen criteria, the same ten as the CEQ Regulations and six additional, for determining whether the impacts of a proposed action are significant. Each criterion is discussed below with respect to the proposed action and considered individually as well as in combination with the others.

1. Can the proposed action reasonably be expected to cause both beneficial and adverse impacts that overall may result in a significant effect, even if the effect will be beneficial?

Response: No. As described in Section 4.1 of the 2015 PEA and Section 1.2 of the 2019 SEA, the proposed action would not change the conduct of the U.S. western and central Pacific Ocean (WCPO) purse seine fleet in a substantial manner. The fleet would continue to be subject to existing management measures. The purse seine effort limits could have some effect on the amount and type of fishing effort exerted by the fleet (if a limit is reached). However, as stated in Section 4.5 of the 2015 PEA and Section 1.4 of the 2019 SEA, because many other factors contribute to the status of the stocks (fishing activities by non-U.S. fleets, oceanographic conditions, etc.), the direct and indirect effects to target stocks of bigeye, yellowfin, and skipjack tuna from implementation of any of the action alternatives would not be expected to be substantial and for the same reasons, effects to other resources in the affected environment would also not be expected to be substantial.

In the 2015 PEA, as supplemented by the 2019 SEA, NMFS also considered whether the proposed action could result in significant social or economic impacts interrelated with natural or physical environmental effects. As stated in the 2019 Regulatory Impact Review (2019 RIR), the purse seine effort limits could lead to some adverse economic impacts, depending on the length of any fishery closure. It is not possible to quantify the likely impacts, in part because vessel operating costs are not known, and also because it is difficult to predict revenues and costs associated with the next-best opportunities that would be available to the fleets after any limit is reached. As discussed throughout the 2015 PEA and 2019 SEA, these direct effects on the fisheries would not lead to substantial effects on the human environment – at the most, there could be some minor reduction in adverse impacts on the stocks of skipjack tuna, bigeye tuna and yellowfin tuna when compared to operation of the U.S. WCPO purse seine fishery absent the proposed action, 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 significant.

2. Can the proposed action reasonably be expected to significantly affect public health or safety?

Response: No. The only identified potential impact to public health and safety from the proposed action would be from the “race to fish” that could be expected in the time period between when a

fishery closure is announced and when the fishery is closed (see Sections 4.1 of the 2015 PEA and Section 1.2 of the 2019 SEA). A race to fish could bring costs in terms of human safety as well as the performance of the vessel and its fishing gear and crew, if it causes vessel operators to forego vessel maintenance or to fish in weather or ocean conditions that it otherwise would not, but the effects are not expected to be substantial, as the purse seine fleet does not exert the majority of its fishing effort in the U.S. EEZ or on the high seas. Thus, significant effects to public health and safety are not anticipated to result from promulgation of the rule.

3. Can the proposed action reasonably be expected to result in significant impacts to unique characteristics of the geographic area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas?

Response: No. The U.S. WCPO purse seine fleet generally does not affect unique characteristics of the geographic area including historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas. Effects on essential fish habitat (EFH) are described under question 13 below. The proposed action would not affect designated EFH.

Effects on critical habitat were considered as part of the analysis of effects on species listed under the Endangered Species Act (ESA), as discussed in Section 4.8 of the 2015 PEA and Section 1.7 of the SEA. The U.S. WCPO purse seine fishery does not interact with areas of designated critical habitat. There are several National Wildlife Refuges and National Monuments in the affected environment (see Section 3.8.3 of the 2015 PEA). However, these resources would not be affected because the potential changes in fishing patterns of the fleets 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, commercial fishing is already prohibited in the National Monuments, pursuant to the 2009 and 2014 Presidential Proclamations. See Sections 3.8.3 and Section 4.8 of the 2015 PEA.

Shipwrecks would be the only known cultural objects potentially within the affected environment. The location of most shipwrecks is unknown. However, as described in Section 4.8.2 the 2015 PEA, purse seine fishing operations does not come into contact with the seafloor, so the operations of the U.S. WCPO purse seine fleet would not be expected to affect any material from shipwrecks, which typically rests on ocean bottoms.

4. Are the proposed action's effects on the quality of the human environment likely to be highly controversial?

Response: No. As described in Section 4.1 of the 2015 PEA and Section 1.2 of the 2019 SEA, the main expected direct effect of the purse seine effort limits would be less U.S. purse seine fishing effort if the limits are reached and the fishery is closed, and fewer skipjack tuna and other species caught by the fishery in the WCPO, and possibly more fishing effort and greater catch of those species in areas of the Pacific Ocean outside of the high seas and U.S. EEZ in the Convention Area than would otherwise occur. Overall, as stated in Section 4.5 of the 2015 PEA and Section 1.4 of the 2019 SEA, these effects could lead to some minor reduction of impacts on the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna in comparison to operation of the

fishery absent implementation of the proposed action, 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).

5. Are the proposed action's effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: No. As described throughout the 2015 PEA, and as supplemented by the 2019 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. As stated in Section 1.1 of the 2019 SEA, the purpose of the proposed action is to contribute to the underlying objectives of the Commission's management of tropical tuna stocks in the WCPO, which, as stated in CMM 2018-01, are, pending the establishment of harvest strategies, and any implementing CMM, to provide for a robust transitional management regime that ensures the sustainability of bigeye, skipjack, and yellowfin tuna stocks. As described in Chapter 4 of the 2015 PEA and Chapter 1 of the 2019 SEA, the main expected effect of the purse seine effort limits would be less skipjack tuna, yellowfin tuna, bigeye tuna, and other species caught by the fishery in the WCPO, and possibly more fishing effort and catch of those species in areas outside of the area closed to fishing than would otherwise occur. Overall, these effects could lead to some minor reduction in adverse impacts 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.

6. Can the proposed action reasonably be expected to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

Response: No. As stated in Section 1.1 of the 2019 SEA, the purpose of the proposed action is to contribute to the underlying objectives of the Commission's management of tropical tuna stocks in the WCPO, which, as stated in CMM 2018-01, are, pending the establishment of harvest strategies, and any implementing CMM, to provide for a robust transitional management regime that ensures the sustainability of bigeye, skipjack, and yellowfin tuna stocks. The need for the proposed action is to satisfy the obligations of the United States under CMM 2018-01 as a Contracting Party to the Convention, pursuant to the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA; 16 USC 6901 *et seq.*). 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.

7. Is the proposed action related to other actions that when considered together will have individually insignificant but cumulatively significant impacts?

Response: No. The cumulative impacts on the resources in the affected environment that could be impacted by the proposed action would likely be a reduction of adverse effects on resources from a reduction in fishing effort in comparison to operation of the fishery absent the management measures that are being or would be implemented under the identified actions (see Chapter 5 of the 2015 PEA and Section 1.8 of the 2019 SEA). Based on all information to date,

the proposed action would not be expected to lead to substantial cumulative impacts on the status of the stocks of bigeye tuna, skipjack tuna, or yellowfin tuna in the WCPO, and no significant cumulative impacts on the human environment, including protected resources, are anticipated from implementation of the proposed action.

8. *Can the proposed action reasonably be expected 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 2015 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. The location of most shipwrecks is unknown. However, purse seine fishing operations do not come into contact with the seafloor, so the operations of the affected fleets would not be expected to affect any material from shipwrecks, embedded in the ocean bottom. 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.

9. *Can the proposed action reasonably be expected to have a significant impact on endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973?*

Response: No. Section 4.8.2 of the 2015 PEA and Section 1.7 of the 2019 SEA present the analysis of effects to species listed under the Endangered Species Act (ESA) consultations from the proposed action.

On November 1, 2006, NMFS issued a no-jeopardy Biological Opinion under the Endangered Species Act for the U.S. purse seine fishery operating in the WCPO (2006 BiOp). The 2006 BiOp analyzed the effects of the fishery on the green turtle (*Chelonia mydas*), the hawksbill turtle (*Eretmochelys imbricate*), the leatherback turtle (*Demochelys coriacea*), the loggerhead turtle (*Caretta caretta*), the olive ridley turtle (*Lepidochelys olivacea*), the blue whale (*Balaenoptera musculus*), the fin whale (*Balaenoptera physalus*), the humpback whale (*Megaptera novaengliae*), the sei whale (*Balaenoptera borealis*), and the sperm whale (*Physeter macrocephalus*).

Since completion of the 2006 BiOp, the following species that occur in the area of operation of the U.S. WCPO purse seine fishery have been listed as threatened or endangered under the ESA: (1) the Indo-West Pacific distinct population segment (DPS) and the Eastern Pacific DPS of the scalloped hammerhead shark (*Sphyrna lewini*); (2) 15 species of coral (*Acropora globiceps*, *Acropora jacquelineae*, *Acropora lokani*, *Acropora pharaonis*, *Acropora retusa*, *Acropora rudis*, *Acropora speciosea*, *Acropora tenella*, *Anacropora spinosa*, *Euphyllia paradivisa*, *Isopara crateriformis*, *Montipora australiensis*, *Pavona diffluens*, *Porites napopora*, and *Seriatopora aculeata*); the giant manta ray (*Manta birostris*); the oceanic whitetip shark (*Carcharhinus longimanus*); and the chambered nautilus (*Nautilus pompilius*). In addition, three DPSs of

loggerhead turtles have been designated in the area of operation of the U.S. WCPO purse seine fishery – the North Pacific DPS, the South Pacific DPS, and the Southeast Indo-Pacific Ocean DPS. Six DPSs of the green turtle have also been designated in areas where overlap could occur with the area of operation of the U.S. WCPO purse seine fishery. These DPSs of the green turtle include: (1) East Indian-West Pacific; (2) Central West Pacific; (3) Southwest Pacific; (4) Central South Pacific; (5) Central North Pacific; and (6) East Pacific. Finally, NMFS revised the ESA listing for the humpback whale to identify 14 DPS, listing one as threatened, four as endangered, and identifying nine others as not warranted for listing. One DPS of the humpback whale has been designated as endangered in the area of operation of the WCPO purse seine fishery – the Western North Pacific DPS.

NMFS prepared a Biological Assessment for the U.S. WCPO purse seine fishery in 2017. Based on the information in the BA, and pursuant to criteria (2), (3), and (4) of the regulations at 50 CFR § 402.16, NMFS reinitiated formal ESA Section 7 consultation on the effects of the U.S. WCPO purse seine fishery on the following species: the blue whale; the sei whale; the sperm whale; the following DPSs of the green turtle: East Indian-West Pacific, Central West Pacific, Southwest Pacific, Central South Pacific, Central North Pacific, and East Pacific; the hawksbill turtle; the leatherback turtle; the following DPSs of the loggerhead turtle: Southeast Indo-Pacific Ocean, South Pacific Ocean, and North Pacific Ocean; the olive ridley turtle, and the following DPSs of the scalloped hammerhead shark: Indo-West Pacific DPS and Eastern Pacific DPS. In May 2018, NMFS included the giant manta ray and the oceanic whitetip in the pending consultation.

As stated above, in the BA, NMFS determined that the U.S. WCPO purse seine fishery may affect but is not likely to adversely affect the 15 ESA-listed species of coral that occur in the area of operation of the fishery. The only potential for interaction of these species with the fishery would be during entry and exit of ports by fishing vessels and while at port, including during offloading and transshipment activities. During vessel transit and during transshipment activities, there is the potential for vessel grounding, and spills and leaks of pollutants. However, as fishing vessels avoid coral reef structures to avoid groundings and damage to their hulls, the chance of interactions between the U.S. WCPO purse seine fishery and listed coral species would be extremely unlikely and therefore discountable. Due to the spatial separation between fishing operations and ESA-listed corals, exposure of ESA-listed corals or coral reef habitat to hydrocarbon-based chemicals such as fuel oils, gasoline, lubricants, and hydraulic fluids that may enter the marine environment during at-sea operations, including fishing and transiting, is unlikely. While fishing operations may cause small volumes of hydrocarbon-based chemicals to enter the marine environment, wind and waves disperse the chemicals widely, such that exposure of ESA-listed corals would be limited and therefore discountable.

NMFS also determined in the BA that the U.S. WCPO purse seine fishery may affect but is unlikely to adversely affect the following two marine mammal species: (1) the fin whale because there have been no recorded interactions with fin whales in the fishery during the years for which data were analyzed (the 2008-2015 time period); and (2) the Western North Pacific DPS of the humpback whale, as the best available data does not indicate the likelihood of interactions with any ESA-listed humpback DPS.

As set forth in the analysis in Chapter 5 of the BA, NMFS determined that the U.S. WCPO purse seine fishery may adversely affect the blue whale; the sei whale; the sperm whale; the following DPSs of the green turtle: East Indian-West Pacific, Central West Pacific, Southwest Pacific, Central South Pacific, Central North Pacific, and East Pacific; the hawksbill turtle; the leatherback turtle; the following DPSs of the loggerhead turtle: Southeast Indo-Pacific Ocean, South Pacific Ocean, and North Pacific Ocean; the olive ridley turtle; and the following DPSs of the scalloped hammerhead shark: Indo-West Pacific DPS and Eastern Pacific DPS. Subsequent to preparation of the BA, in a memorandum dated May 17, 2018, NMFS also determined that the U.S. WCPO purse seine fishery may adversely affect the oceanic whitetip shark and the giant manta ray. However, in memoranda dated December 5, 2017, May 17, 2018, and December 6, 2018, NMFS determined that continuation of the fishery during the period of consultation is not likely to jeopardize the continued existence of any of these species and would not constitute an irreversible or irretrievable commitment of resources under ESA Section 7(d).

The 2015 PEA at Sections 3.8 and 4.8 discussed impacts to all of the above-mentioned species except for the chambered nautilus, the oceanic whitetip shark, and the giant manta ray. The 2019 SEA includes more detailed information on impacts to these species and that discussion is included below.

The chambered nautilus occur in near shore areas, such as in coral reef structures, steep-sloped reefs, and fore reefs. They do not occur in the open ocean where the U.S. purse seine fishery operates. The only potential for interaction of these species with the fishery would be during entry and exit of ports by fishing vessels, including during offloading and transshipment activities. During vessel transit and during transshipment activities, there is the potential for vessel grounding, and spills and leaks of pollutants. However, as fishing vessels avoid coral reef and other reef structures to avoid groundings and damage to their hulls, the chance of interactions between the U.S. WCPO purse seine fishery and chambered nautilus would be extremely unlikely and therefore discountable. Due to the spatial separation between fishing operations and the chambered nautilus, exposure of the chambered nautilus to hydrocarbon-based chemicals such as fuel oils, gasoline, lubricants, and hydraulic fluids that may enter the marine environment during operations, including fishing and transiting, is unlikely. While fishing operations may cause small volumes of hydrocarbon-based chemicals to enter the marine environment, wind and waves would likely disperse the chemicals widely, such that exposure of the chambered nautilus would be limited and therefore discountable. In memorandum dated December 6, 2018, NMFS determined that the U.S. WCPO purse seine fishery may affect but is not likely to adversely affect the chambered nautilus.

The oceanic white tip shark was listed as threatened in 2018, but is not subject to ESA Section 4(d) regulations at this time. (83 FR 4153, Jan. 30, 2018). Observer data from the Pacific Islands Forum Fisheries Agency (FFA) from 2008 to 2015 indicate that the U.S. purse seine fishery has interacted with 1,143 oceanic whitetip sharks (an average of 143 per year), with ~31% of those released dead where fate was recorded. Based on this incomplete data, NMFS projected that during the period of consultation, the fishery would interact with 73 oceanic whitetip sharks. Little is known about post-release mortality of oceanic whitetip sharks from purse seine vessels. The Status Review report for oceanic whitetips assumed mortality rates for oceanic whitetips to be similar to those (>85%) observed for silky sharks. Using the same assumption on mortality

rates from the status review, NMFS anticipates approximately 62 mortalities to oceanic whitetip sharks during the consultation period. A stock assessment conducted in 2012 for oceanic whitetip shark in the WCPO estimated biomass at 7,295 mt, which is roughly equivalent to 200,000 individuals. Seventy-three interactions represent about 0.04% of the stock population in the WCPO. Although overall population trends remain uncertain, the removal of such a small fraction of the population is not likely to have a substantial impact on the oceanic whitetip shark's population abundance or potential for recovery. In memoranda dated May 17, 2018 and December 6, 2018, NMFS determined that the U.S. WCPO purse seine fishery is not likely to jeopardize the continued existence of the oceanic whitetip shark during the period of consultation.

The giant manta ray was listed as threatened in 2018, but is not subject to ESA Section 4(d) regulations at this time. (83 FR 2916, Jan. 22, 2018). FFA observer data from 2008 to 2015 indicate that the U.S. purse seine fishery has interacted with 816 giant manta rays (an average of 117 per year) and 1,027 unidentified manta rays (an average of 128 per year) with ~4% of those released dead where fate was recorded. Based on this incomplete data, NMFS projected that during the period of consultation, the fishery would interact with 126 giant manta rays. Little is known about the post-release mortality of giant manta rays from purse seine vessels, but using the mortality rate based on observer data (4%), NMFS anticipates approximately 5 giant manta ray mortalities during the period of consultation. There are no global estimates of giant manta rays available, and median bycatch estimates of mantas and mobulids in the WCPO by all purse seine vessels from 2003 through 2016 have ranged from 1,830 to 4,845 individuals – the average of the past five years is 3,719 individuals. Accordingly, there is insufficient data to conclude that the U.S. purse seine fishery is having a substantial impact on the giant manta ray's population distribution or abundance. This finding is supported by the 2016 NMFS Status Review Report for the giant manta ray, which notes that bycatch of this species in the U.S. tuna purse seine fishery is likely to have minimal impact. In memoranda dated May 17, 2018 and December 6, 2018, NMFS determined that the U.S. WCPO purse seine fishery is not likely to jeopardize the continued existence of the giant manta ray during the period of consultation.

Effects to protected species from the implementation of this action would not appreciably alter expected interaction rates with protected species in a manner not considered in previous consultations. The proposed action would implement fishing effort limits that could reduce U.S. purse seine fishing effort in the WCPO as a result of a fishery closure and consequently, could reduce the potential for the fishery to interact with any ESA-listed species than if the fishery were operating under the No-Action Alternative. To the extent that there is a spatial shift in fishing effort resulting from effort moving to an area outside of the action area, due to a fishery closure, any effects in terms of interactions with protected resources would be expected to be small compared to typical year-to-year variations in interactions with species driven by changing oceanic and economic conditions. Thus, implementation of this proposed action is not expected to lead to substantial effects on ESA-listed species to an extent not already evaluated in ESA consultations.

NMFS has also completed informal ESA Section 7 consultation for species under the jurisdiction of USFWS for the U.S. WCPO purse seine fishery. Letter from NMFS dated August 28, 2017; concurrence letter from USFWS dated October 11, 2017.

10. Can the proposed action reasonably be expected to threaten a violation of Federal, state, or local law or requirements imposed for environmental protection?

Response: No. As stated in Section 1.1 of the 2019 SEA, the purpose of the proposed action is to contribute to the underlying objectives of the Commission's management of tropical tuna stocks in the WCPO, which, as stated in CMM 2018-01, are, pending the establishment of harvest strategies, and any implementing CMM, to provide for a robust transitional management regime that ensures the sustainability of bigeye, skipjack, and yellowfin tuna stocks. The need for the proposed action is to satisfy the obligations of the United States under CMM 2018-01 as a Contracting Party to the Convention, pursuant to the authority of the WCPFCIA. As such, the rule would not be expected to violate any laws or requirements imposed for the protection of the environment.

11. Can the proposed action reasonably be expected to adversely affect stocks of marine mammals as defined in the Marine Mammal Protection Act?

Response: No. The proposed action is not expected to adversely affect marine mammal stocks in a manner not considered or authorized in the commercial taking exemption under section 118(c) of the MMPA, as described in Section 4.8 of the 2015 PEA and Section 1.7 of the 2019 SEA. To the extent that this action leads to a reduction in fishing effort or catch, any effect to marine mammal species may be reduced compared to prior years, since there would be a reduced risk of interaction with them. To the extent that this action causes a spatial shift in fishing effort, any effects in terms of interaction rates with marine mammals would likely be small compared to typical year-to-year variations in such interactions driven by changing oceanic and economic conditions. Thus, any changes resulting from the proposed rule would not be expected to be substantial and are not expected to result in any increased impacts to marine mammals.

The U.S. WCPO purse seine fishery is listed as a Category II fishery under the regulations implementing the MMPA, meaning that it is a commercial fishery determined to have occasional incidental mortality and serious injury of marine mammals. See 84 FR 22051 (published May 16, 2019) for the List of Fisheries for 2019.

Pursuant to NMFS' reinitiated ESA consultation for the U.S. WCPO purse seine fishery, NMFS is evaluating whether this fishery has adverse effects on ESA-listed marine mammals, and if so, whether these fisheries are subject to additional requirements under MMPA section 101(a)(5)(E).

See response to #9 above

12. Can the proposed action reasonably be expected to adversely affect managed fish species?

Response: The proposed action would implement an international conservation and management measure for tropical tunas and is not expected to adversely affect managed fish species.

NMFS evaluated whether the proposed action could reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action. 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 2015 PEA and Section 1.2 of the 2019 SEA, should there be a reduction in overall fishing effort by the vessels in the U.S. WCPO purse fleet under this proposed action, there could be resulting effects on the stocks of skipjack tuna, yellowfin tuna, and bigeye tuna, which include a direct reduction of adverse impacts by reducing fishing mortality on the stocks over the No-Action Alternative, and indirect reduction of adverse effects if the decreased fishing mortality leads to long-term positive effects on the stocks.

Overall, because the fishing patterns and practices of the fleet would not change substantially under the proposed action from the No-Action Alternative, and, as described in Chapter 3 of the 2015 PEA, because many other factors contribute to the status of the stocks (fishing activities by non-U.S. fleets, oceanographic conditions, etc.), the direct and indirect effects to skipjack tuna, yellowfin tuna, and bigeye tuna from implementation of the proposed action would be expected to be small.

NMFS evaluated whether the proposed action could reasonably be expected to jeopardize the sustainability of any non-target species. Section 4.7 of the 2015 PEA and Section 1.6 of the 2019 SEA, discuss 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 fishing limits and restrictions and any associated fishery closure and shifts of fishing effort to other areas. 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 non-target fish species (see Table 12 of the 2015 PEA), the overall direct and indirect effect on non-target fish species under the proposed action would be expected to be minor or negligible.

13. Can the proposed action reasonably be expected to adversely affect essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act?

Response: No. As stated in Section 4.8 of the 2015 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

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).

14. Can the proposed action reasonably be expected to adversely affect vulnerable marine or coastal ecosystems, including but not limited to, deep coral ecosystems?

Response: The proposed action would not affect vulnerable marine or coastal ecosystems. As stated in Section 4.8 of the 2015 PEA, 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 does not involve contact with the seafloor. Thus, the proposed action would not affect ocean or coastal habitats, including vulnerable marine or coastal ecosystems.

15. Can the proposed action reasonably be expected to adversely affect biodiversity or ecosystem functioning (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: No. As stated in Section 1.1 of the 2019 SEA, the purpose of the proposed action is to contribute to the underlying objectives of the Commission’s management of tropical tuna stocks in the WCPO, which, as stated in CMM 2018-01, are, pending the establishment of harvest strategies, and any implementing CMM, to provide for a robust transitional management regime that ensures the sustainability of bigeye, skipjack, and yellowfin tuna stocks. As discussed in Section 4.5 of the 2015 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 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 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 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.

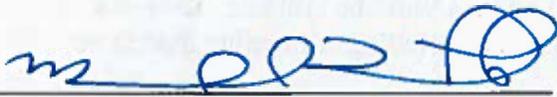
16. Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?

Response: No. As described in Section 4.1 of the 2015 PEA and Section 1.2 of the 2019 SEA, should any vessels in the fleet be affected by the purse seine effort limits being reached, the main expected direct effect would be less U.S. purse seine fishing effort in the closed areas and possibly more fishing effort and catch of tropical tunas in areas of the Pacific Ocean outside of the closed areas than would otherwise occur. Although a geographical shift of fishing effort is possible, none of these effects would be expected to result in the introduction or spread of a

nonindigenous species since the vessels in the fleets would not be entering any new geographic areas of operation.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting 2015 PEA and 2019 SEA and the 2019 RIR, it is hereby determined that the proposed action (the rulemaking to implement provisions of CMM 2018-01 regarding purse seine fishing) will not significantly impact the quality of the human environment as described above and in the supporting 2015 PEA and 2019 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

6/6/2019

Date