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

Revised Swordfish Trip Limits in the American Samoa Longline Fishery
(RIN 0648-BH61)

October 22. 2020

Introduction

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

- National Oceanic and Atmospheric Administration (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).

The National Marine Fisheries Service (NMFS) proposes to remove the swordfish retention limit in the American Samoa longline fishery to allow fishermen to retain all swordfish caught while deep-set fishing. In 2011, NMFS implemented the 10 swordfish fish per trip swordfish retention limit together with a suite of gear and operational requirements for vessels longer than 40 ft. to discourage longline fishermen that target South Pacific albacore in the deep-set fishery from switching to shallow-set fishing in order to reduce interactions with green sea turtles. However, fishery catch and landings data indicate that fishermen are not targeting swordfish through shallow-set fishing. Thus, the swordfish retention limit results in an inefficient use of fishery resources, leading to wasteful regulatory discards and lost revenue and has no effect on green sea turtle conservation.

All other deep-set longline fishery regulations and management measures under the Fishery Ecosystem Plan for the Pelagic Fisheries of the Western Pacific (Pelagic FEP), including gear and operational restrictions, limited vessel participation, prohibited fishing areas, fishery observers, logbook reporting, and vessel monitoring systems, will remain in place and continue to apply in the fishery. The retention limit is not needed for swordfish stock conservation or management because the fishery does not catch a large number of swordfish and the stock is healthy (see EA, Section 3.2.1).

The purpose of the proposed action is to increase efficiency in the American Samoa longline fishery by eliminating wasteful regulatory discards of swordfish and associated lost revenue, which are contrary to National Standards 5, 7 and 8 in the Magnuson-Stevens Fishery Conservation and Management Act (Environmental Assessment (EA), Section 1.4). The proposed action would reduce or eliminate unnecessary and wasteful regulatory discards of swordfish and allow the fishery to benefit from the small amount of swordfish caught.

The proposed action was developed by the Council after considering input from its Scientific and Statistical Committee and the public as described in the EA (Sections 1.1, 1.7.1, and 2.1). NMFS solicited comments on the proposed action and on the analysis in the EA over a 15-day public comment period associated with this rulemaking. NMFS received comments from three submitters and addressed these comments in the final rule. NMFS did not receive any comment on the draft EA that required a substantive change to the content of the EA including the conclusions of the environmental effects analysis. (EA, Section 1.7.1).

Environmental Assessment

NMFS and the Council prepared an EA that analyzed potential impacts on the human environment of modifying the per-trip swordfish retention limit in the American Samoa longline fishery, entitled, "Environmental Assessment: Revised Swordfish Trip Limits in the American Samoa Longline Fishery" (NMFS and WPFMC 2020). The EA considered three management alternatives, including the proposed action and a No-Action Alternative (EA, Section 2). The alternatives considered were:

Alternative 1: No action/status quo -- Continue to allow up to 10 swordfish to be retained per trip;
Alternative 2: Modify the swordfish retention limit to allow a vessel to retain up to 25 swordfish per trip (unlimited if an observer is aboard)
Alternative 3: Remove the swordfish retention limit (Preferred).

NMFS selected Alternative 3. As described in the EA (Section 2.2.3), Alternative 3 would not result in a change to fishing and would not, therefore, change the way the fishery operates or change the amount of swordfish incidentally caught by the longline fishery. The measure is expected to result in greater efficiency by reducing waste associated with unnecessary regulatory discards. As described below in the "Significance Analysis," the EA demonstrates that removing the swordfish retention limit would provide regulatory relief to American Samoa longline fishermen while maintaining safeguards for green sea turtles and other protected species through existing gear restrictions and other management measures. No other existing regulations for the American Samoa limited entry longline fishery, besides the swordfish retention limit, would change.

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 NAO 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. We discuss each criterion below with respect to the proposed action and consider each one individually and in combination with the other criteria.

The significance analysis that follows is the result of analyzing the effects of the fishery after the management measure in Alternative 3 has been implemented compared with effects of the fishery operating with the 10 swordfish per-trip retention limit in place (the no-action

Alternative). We base the effects analysis on the expected fishery outcome of Alternative 3, which we explained above and in the EA in Section 2.2.3.

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?

No. The proposed action would not change fishing in the American Samoa longline fishery or have significant effects on the environment. The proposed action would not change the amount of swordfish caught by the fishery and would allow all fish that are caught to be retained. Swordfish catches are sustainable (EA, Section 3.2.1). The EA describes that besides the swordfish retention limit, no other regulations for the American Samoa limited entry longline fishery would change and the proposed action would not result in a change to the way the fishery operates including location fished, gear used, and intensity of fishing. Removing the retention limit of 10 swordfish per trip for vessels longer than 40 ft. would reduce unnecessary and wasteful regulatory discards in the fishery. The proposed action would allow the small number of swordfish that would have previously been discarded to be retained providing some limited revenue and community benefits. On average, just 72 swordfish (30% of the total swordfish catch) are discarded annually (EA, Section 2.2). For these reasons, the proposed action is not expected to cause either beneficial or adverse impacts that overall may result in a significant effect (EA, Section 4).

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

No. The participants in the American Samoa longline fishery are not known to experience public health or safety-at-sea issues. Besides allowing the retention of more swordfish, no other regulations for the American Samoa limited entry longline fishery would change and fishery operations would not change. The EA describes that fishermen already land large fish in this fishery. Furthermore, the proposed action would not result in a change to the fishery including a race to fish. Therefore, the proposed action would not result in a safety issue for fishermen at sea and is not expected to significantly affect public health or safety. (EA, Section 4.4)

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?

No. The proposed action is not expected to have adverse impacts to unique characteristics of the geographic area such as essential fish habitat (EFH), habitat areas of particular concern (HAPC), marine protected areas, marine sanctuaries, or marine monuments, or other vulnerable marine or coastal ecosystems. Federal regulations prohibit fishing within the Rose Atoll Marine National Monument. The National Marine Sanctuary of American Samoa is protected under NOAA's Office of National Marine Sanctuaries and regulations at 15 CFR Part 922 (EA, Section 3.5.2). Under the no action alternative, longline fishing has not had any discernable impact on resources in the American Samoa National Marine Sanctuaries or the Rose Atoll Marine National Monument. Under the preferred alternative 3, longline fishing in these areas would continue to be restricted by territorial and federal laws, so none of these areas would be impacted (EA, Section 4.5.1). Besides allowing the retention of swordfish, the proposed action would not

change the fishery in any manner. There are no known historical sites, structures or objects, archeological or cultural resources, or ecologically critical areas present in areas that the American Samoa longline fishery operates, and the proposed action would not change fishing, so there is no potential for environmental effects on such resources. (EA, Section 4.5.1)

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

No. NMFS has not identified any controversy about the potential effects of the proposed action on the quality of the human environment. The EA describes that there were no comments opposing removing the swordfish retention limit during Council meetings in June 2013 and March 2018 discussing the proposed action (EA, Section 2.1). In addition, the American Samoa Fishery Ecosystem Plan Advisory Panel discussed the topic during their meeting held in Tutuila, American Samoa and the members of the Advisory Panel recommended that the swordfish limit for American Samoa should be removed (EA, Section 2.1). NMFS did not receive any comments on the draft EA that indicated the analysis of effects of the proposed action is highly controversial. (EA, Sections 1.1, 1.7.1, 2.1, and 4.6). Further, see response to Question 9 below regarding the lack of impacts from the proposed action on endangered or threatened species.

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

No. NMFS considered the proposed action's effects on the human environment and found it does not involve highly uncertain or unknown effects. NMFS and the Council manage the American Samoa longline fishery in accordance with provisions of the Pelagic FEP. Fishery participants must comply with a suite of fishing regulations intended to ensure the fishery is sustainably managed, and that it operates in compliance with applicable laws. The potential ability of the American Samoa longline fleet to retain all the swordfish caught is not expected lead to notable increases in swordfish catch. Due to logistic complexity and cost, longline vessels do not ship catch off island, and as a result, there is little to no incentive for American Samoa longline fishery participants to modify their gear to set for swordfish. In addition, swordfish catch rates indicate low abundance of the species within the normal fishing grounds of American Samoa longline vessels (U.S. exclusive economic zone (EEZ) around American Samoa). As a result, there are no changes anticipated in how the fishery operates in terms of gear types, areas fished, level of catch or effort, and target and non-target stocks. (EA Sections 4.2.2, and 4.2.3, 4.6).

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?

No. The proposed action would not establish precedent in making future changes to fishing trip limits for swordfish or related pelagic stocks as each management action is considered at the time it is proposed through Council deliberative process and public input (EA, Section 4.6). The proposed action is a relatively minor management action that, while providing some benefit to fishermen and improving efficiency in the fishery, would not change fishery operations and is not expected to result in a need for further management action. (EA Section 4.6).

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

No. The analysis found no past, present, or reasonably foreseeable actions that could combine or interact with the effects from the proposed action to result in cumulatively significant impacts. The EA describes that besides the swordfish retention limit, no other existing regulations for the American Samoa limited entry longline fishery would change. Removing the retention limit of 10 swordfish per trip would reduce the regulatory discards in the fishery and would not change operations in the fishery. From 2008 through 2018, the number of swordfish caught ranged from 0.62 to 2.85 fish per trip. (EA, Section 3.2.1.1). Catches of swordfish would continue to be sustainable (EA, Section 4.7.1.3). Current and future fishery and stock status monitoring and assessments take into consideration variations in environmental factors over time including, amongst others, the effects of oceanic-scale fluctuations and climate change. (EA, Section 4.7.1.2). Overall, the proposed action would have negligible impacts on stocks, even when added to impacts by other fisheries and the environment (EA, Section 4.7.1.3).

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?

No. There are no known districts, sites, highways, structures or objects that are listed in or eligible for listing in the National Register of Historic Places within Federal waters of American Samoa where longline fishing activities are conducted. Additionally, longline fishing activities are not known to result in adverse impacts to scientific, historic, archeological or cultural resources because fishing activities occur generally miles offshore. The proposed action would not change the fishery in any manner. Therefore, there is no potential for loss or destruction of significant scientific, cultural, or historical resources (EA, Section 4.5).

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?

No. The proposed action would increase efficiency by reducing wasteful discards of swordfish with no effect on interactions with protected species because there would be no other change in the fishery's operation or existing regulations (EA, Section 4.3). The fishery would continue to operate as authorized under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA). In accordance with the ESA, the fishery has undergone, and is undergoing reviews, to evaluate impacts on ESA-listed species. If appropriate, NMFS authorizes a level of interaction that will ensure the fishery will not prevent the survival and continued recovery of listed species, or the conservation of other protected species.

On April 3, 2019, NMFS reinitiated Section 7 consultation under the ESA for the American Samoa longline fishery due to exceedance of the 3-year sea turtle incidental take statement, and the recent listing of the oceanic whitetip shark, giant manta ray, and chambered nautilus. On April 3, 2019 and May 6, 2020, NMFS determined that the conduct of the fishery during the period of consultation will not violate ESA Sections 7(a)(2) and 7(d); that is, the operation of the

fishery is not likely to jeopardize the continued existence of species listed as threatened or endangered, result in the destruction or adverse modification of designated critical habitat, nor will it result in making irreversible or irretrievable commitments of resources. Specifically, NMFS determined that there was no new information that would lead us to reconsider the core assumptions and conclusions reached in the 2015 BiOp for leatherback turtle, South Pacific loggerhead turtle, Indo-West Pacific scalloped hammerhead shark, humpback whale, sperm whale, and six reef building corals. As a result, NMFS found that the 2015 BiOp remains valid for these species during the period of reinitiated consultation. (EA, Sections 3.2, 3.5, and 4.3). Section 7 determinations continue to apply under the proposed action as it would not change the conduct of the fishery. For these reasons, the proposed action is not expected to have a significant impact on endangered or threatened species, or their critical habitat as defined under the ESA (EA, Section 4.3)

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

No. The proposed action of removing the swordfish retention limit would not result in a change of catch or fishery operations in any way that would have significant adverse environmental effects, including target and non-target stocks (EA, Section 4.2), protected species (EA, Section 4.3), or special marine areas (EA, Section 4.5.1). The fishery is operating consistent with applicable laws imposed for environmental protection, which would not change under the proposed action. As a result, the proposed action would not violate any law imposed for environmental protection (EA, Sections 1.1 and 4.5.1, 5).

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

No. The American Samoa longline fishery is a Category II fishery under the most recent List of Fisheries (April 16, 2020; 85 FR 21079). A Category II fishery is one with occasional incidental morality and serious injury of marine mammals. Under the proposed action, the ability to retain more swordfish is not anticipated to change fishermen behavior or fishing operations that would lead to greater impacts to marine mammals as retention of swordfish occurs after the catch is retrieved. Because the proposed action would not modify vessel operations or other aspects of the American Samoa longline fishery, NMFS does not expect the fishery to affect marine mammals in any manner not previously considered by the List of Fisheries Classification or authorized under the commercial fishing take exemption of section 118 of the MMPA. (EA, Sections 3.2 and 4.3).

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

No. The Council and NMFS manage the American Samoa longline fishery in accordance with provisions of the Pelagic FEP. The American Samoa longline fishery primarily targets albacore for landings at the local Pago Pago cannery, although the fishery also catches and retains other tunas and other pelagic species for local sale and home consumption. Fishery participants must comply with a suite of fishing regulations intended to ensure the fishery is sustainably managed, and that it operates in compliance with applicable laws.

In addition, swordfish is a highly migratory stock subject to management by Western and Central Pacific Fisheries Commission (WCPFC) and the Inter-American Tropical Tuna Commission. As such, the fishery is also subject to conservation and management measures agreed to by the WCPFC and implemented by NMFS at 50 CFR 300. The most recent stock assessment indicated that Southwest Pacific swordfish is neither overfished nor subject to overfishing. Catches of Southwest Pacific swordfish in 2018 by the American Samoa longline fishery amounted to approximately 0.08% of the maximum sustainable yield (EA, Section 3.2.1.1).

The proposed action would remove the retention limit of 10 swordfish per trip and reduce the regulatory discards in the fishery. The EA describes that besides the swordfish retention limit, no other regulations for the American Samoa limited entry longline fishery would change and the proposed action would not result in a change to the way the fishery operates including the amount of fish that would be caught, location fished, gear used, and intensity of fishing. For these reasons, the proposed action is not expected to adversely affect any managed fish species (EA, Sections 3.2, 3.5, and 4.2).

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?

No. The American Samoa longline fishing is not known to adversely affect EFH or HAPC and because the proposed action would only allow the retention of swordfish and not alter fishery operations, it would not have the potential to cause substantial damage to the ocean or adversely affect coastal habitats including designated EFH. (EA, Section 4.5.1)

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

No. The fishery does not affect vulnerable marine or coastal ecosystems as the American Samoa longline fishery targets a pelagic stock, albacore, in the EEZ. Regulations prohibit commercial fishing for vessels greater than 50 ft in the Large Vessel Prohibited Area (LVPA) and within the Rose Atoll Marine National Monument. Prior to the establishment of the LVPA and Monument, there were no reported incidents of gear loss or vessel groundings by U.S.-flagged vessels. Because the proposed action would not change longline fishing besides allowing the retention of swordfish, the proposed action would not affect vulnerable marine or coastal ecosystems. (EA, Section 4.5.1)

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

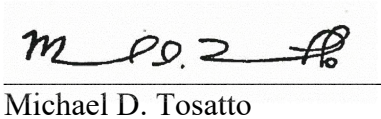
No. To date, there have been no identified impacts to marine biodiversity and/or ecosystem function from the American Samoa longline fishery (EA, Section 4.5.1). Because the proposed action would not change fishery operations besides allowing the retention of swordfish, the proposed action is not expected to adversely affect biodiversity or ecosystem functioning (EA, Section 4.5).

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

No. Longline fishing is not known to be a potential vector for spreading alien or invasive species, as most vessels fish within the U.S. EEZ around American Samoa and the proposed action would not change fishery operations besides allowing the retention of swordfish. For this reason, the proposed action is not expected to increase the potential for the spread of alien species into or within American Samoa waters. (EA, Section 4.5.1)

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting EA prepared for "Revised Swordfish Trip Limits in the American Samoa Longline Fishery," NOAA has determined that removing the per-trip swordfish retention limit will not significantly impact the quality of the human environment. In determining no significant impacts, all beneficial and adverse impacts of the proposed action have been addressed. Accordingly, it is not necessary to prepare an environmental impact statement for this action.



Michael D. Tosatto
Regional Administrator

10/22/2020
Date

Attachment: NMFS (National Marine Fisheries Service) and WPFMC (Western Pacific Fishery Management Council). 2020. Environmental Assessment: Revised Swordfish Trip Limits in the American Samoa Longline Fishery. RIN 0648-BH61. NMFS Pacific Islands Regional Office, Honolulu, HI. 96 pp.