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NATIONAL MARINE FISHERIES SERVICE
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Finding of No Significant Impact

Implementation of Emergency Decisions of the Western and Central Pacific Fisheries Commission – RIN 0648-BJ86

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.¹

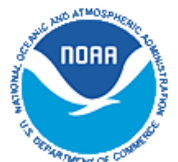
Background

The National Marine Fisheries Service (NMFS) is undertaking a rulemaking under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to satisfy the obligations of the United States as a Contracting Party to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention).

The rulemaking would establish a framework to implement short-notice decisions of the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC). Using the framework established through the rule, this action also includes a temporary specification to implement three short-notice WCPFC decisions. The temporary specification waives the following regulations through September 14, 2021: U.S. purse seine observer coverage requirements at 50 CFR 300.223(e); the prohibition on at-sea transshipments for U.S. purse seine vessels at 50 CFR 300.216(b)(1); and the requirements regarding observer coverage for at-sea transshipments at 50 CFR 300.215(d) and 300.216(b)(2).

On March 27, 2020 (85 FR 17285), in response to public health concerns related to the COVID-19 pandemic, NMFS published an emergency rule providing authority to waive certain observer requirements. This rule was subsequently extended through March 26, 2022 (86 FR 16307;

¹ This FONSI is being prepared using the 1978 CEQ NEPA Regulations. NEPA reviews initiated prior to the effective date of the revised CEQ regulations may be conducted using the 1978 version of the regulations. The effective date of the 2020 CEQ NEPA Regulations was September 14, 2020 (see 85 FR 43304). This review began on September 9, 2020, and the agency has decided to proceed under the 1978 regulations.



March 29, 2021). On April 8, 2020, in response to the international concerns over the health of observers and vessel crews due to the COVID-19, the Commission made an intersessional decision to suspend the requirements for observer coverage on purse seine vessels on fishing trips in the Convention Area through May 31, 2020. The Commission subsequently extended that decision several times, and the current extension is effective until August 15, 2021. NMFS regulations at 50 CFR 300.223(e) implement a WCPFC requirement for 100 percent WCPFC observer coverage² on purse seine vessels (with limited exceptions). Accordingly, in order to carry out the Commission's intersessional decision, NMFS has waived the requirement under 50 CFR 300.223(e) until August 15, 2021.

NMFS regulations at 50 CFR 300.216(b)(1) implement the WCPFC prohibition on at-sea transshipments for purse seine vessels. On April 20, 2020, in response to the international concerns over the health of vessel crews and port officials due to COVID-19, the Commission made an intersessional decision to modify this prohibition as follows – purse seine vessels can conduct limited at-sea transshipments, if transshipment in port cannot be conducted, in accordance with the domestic laws and regulations of the port State. The Commission subsequently extended that decision and the current extension is effective until August 15, 2021.

NMFS regulations at 50 CFR 300.215(d) and 50 CFR 300.216(b)(2) implement WCPFC provisions regarding observer coverage for at-sea transshipments. On May 13, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID-19, the Commission made an intersessional decision to suspend the requirements for observer coverage for at-sea transshipments. The Commission subsequently extended that decision and the current extension is effective until August 15, 2021.

NMFS anticipates that the Commission will extend and/or modify the three intersessional decisions described above and also might make additional short-notice decisions in the near future that require immediate implementation and are temporary in nature. NMFS regulations at 50 CFR 300 Subpart O implement multiple WCPFC decisions that are currently in force. The WCPFC Implementation Act authorizes NMFS to promulgate such regulations as may be necessary to carry out the United States' international obligations as a member of the Commission, including recommendations and decisions adopted by the Commission. However, NMFS does not currently have a process to implement quickly short-notice WCPFC decisions requiring immediate action that address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises.

This rule would establish a framework through which NMFS may issue temporary specifications, each for a period less than one year in total, inclusive of all extensions, that promptly suspend or modify existing regulations in 50 CFR 300 Subpart O, which implement the United States' obligations under the Convention and WCPFC decisions. This framework would

² A WCPFC Observer means a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission's Regional Observer Programme, including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the Commission's Regional Observer Programme.

allow NMFS to modify or waive existing NMFS regulations in response to short-notice WCPFC decisions, including intersessional decisions that address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises. This framework would help ensure that NMFS regulations remain consistent with international obligations that may unexpectedly and quickly change in response to global events. NMFS does not intend to use this framework to implement WCPFC decisions that are routine and enter into effect at least 60 days after the decision is made, as specified in Article 20(5) of the Convention.

Any temporary specification issued pursuant to this framework would be published in the *Federal Register* and will include information regarding the basis for the modification (*i.e.*, a description of the WCPFC decision), the temporary modifications to the regulations, and the duration of the changes. Under the framework, NMFS may change (including extend, so long as the duration of the original rule in addition to any extension is less than one year) any temporary specification by publishing a new temporary specification in the *Federal Register*. NMFS may revoke any temporary specification by publishing a notice in the *Federal Register*. As appropriate, temporary specifications may remain in effect up to 30 days after the expiration of the underlying WCPFC decision to allow NMFS adequate time to issue extensions or changes to the temporary specification, if needed, without unnecessarily exceeding the timeframe of the underlying WCPFC decision.

NMFS would use the framework established under the rule to implement by temporary specification the three recent WCPFC intersessional decisions, described above, that are in effect through August 15, 2021. The temporary rule would waive the regulations described above until September 14, 2021, unless NMFS earlier rescinds this waiver by notice.

NMFS prepared a supplemental environmental assessment (SEA), *Supplemental Environmental Assessment to Update through 2025: 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*, which described the impact on the human environment that would result from implementation of this action. The SEA analyzed a range of alternatives for potential short-notice WCPFC decisions that may need immediate implementation through temporary specifications, based on the three intersessional decisions the WCPFC has made in 2020 and 2021. As stated in the SEA, the framework to promulgate the temporary rules would itself be a purely administrative process with no expected environmental effects.³

The proposed action for the purposes of this FONSI is the implementation of some of the temporary suspensions included under either Alternative B or K in the SEA. Under the proposed action, there would be the temporary suspension of the following requirements for a period of time less than one year: purse seine observer coverage; the prohibition on purse seine transshipments at sea in areas under the national jurisdiction of the port State; and at-sea transshipment observers.

³ The SEA also includes analysis of several alternatives to implement WCPFC tropical tunas decisions through 2025 that would be implemented separately and not through the framework process.

Significance Analysis

The 1978 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. We discuss each criterion below with respect to the proposed action, and consider each one both individually and in combination with the other criteria..

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. The proposed action would affect the following fisheries in the western and central Pacific Ocean (WCPO): the U.S. WCPO purse seine fishery; the Hawaii-based longline fisheries; the American Samoa-based longline fishery; and the South Pacific albacore troll fishery.

For the U.S. WCPO purse seine fishery, as described in Section 2.1.2.6 of the SEA, the temporary suspension of purse seine observer coverage would be unlikely to affect current fishing patterns and practices in a substantial manner. Although the temporary suspension of purse seine observer coverage could provide some cost savings to the fleet, those cost savings would be unlikely to affect overall fishing patterns and practices (i.e., vessels would be unlikely to fish more or less due to the costs savings). In addition, vessels would be unlikely to change fishing routes or locations due to suspension of observer coverage, as vessel operators currently coordinate observer deployments with the Pacific Islands Forum Fisheries Agency to accommodate their planned trip departure locations and port calls. However, it may be necessary initially to modify planned trip routes to return observers that are already on board the vessel to specific ports.⁴

As described in Section 2.1.2.11 of the SEA, the temporary suspension on the prohibition on purse seine transshipment at sea to locations under the national jurisdiction of the port State could lead to some minor changes in fishing patterns and practices. Vessels in the fleet would transship in different locations than they have in the past. However, it is likely such locations would be restricted to certain areas close to ports that are designated for transshipment by the port State. Thus, this aspect of the proposed action is not expected to substantially affect fishing patterns and practices of the fleet.

As described in Section 2.1.2.6 of the SEA, the temporary suspension of at-sea observer coverage provisions would not be expected to affect the fishing patterns and practices of the U.S.

⁴ Vessel owners would likely be responsible for the costs of repatriation or return to port of any observer on the vessel. While these costs are difficult to predict, they could be substantial and would counteract any cost savings from the temporary suspension of the observer coverage requirements. However, NMFS has information to indicate that repatriation has been completed for U.S. purse seine vessels operating in the Convention Area, so such a cost is unlikely to be incurred in the reasonably foreseeable future.

purse seine fleet. Vessels in the fleet are currently prohibited from at-sea transshipment, so these regulations do not apply to them. Should the prohibition on at-sea transshipment be temporarily suspended, as discussed above, and vessels in the fleet begin to transship at sea, the temporary suspension of at-sea observer coverage provisions would neither impose new requirements nor remove existing ones on the fleet.

For the Hawaii-based longline fisheries, as stated in Section 2.2.2.4 of the SEA, the temporary suspension of at-sea transshipment observers would not be expected to substantially affect the fishing patterns and practices of longline vessels in the Hawaii-based longline fisheries. These vessels have conducted limited transshipments in the Convention Area in recent years. Thus, the requirement to carry an observer during at-sea transshipment or the suspension of the requirement is not expected to affect vessel operations.

For the American Samoa-based longline fishery, as stated in Section 2.3 of the SEA, the temporary suspension of at-sea transshipment observers would not be expected to substantially affect the fishing patterns and practices of vessels in the fishery. These vessels have not conducted transshipments in the Convention Area in recent years. Thus, the requirement to carry an observer during at-sea transshipment or the suspension of the requirement is not expected to affect vessel operations.

For the South Pacific albacore troll fishery, as stated in Section 2.4 of the SEA, the temporary suspension of at-sea transshipment observers would not be expected to substantially affect the fishing patterns and practices of vessels in the fishery. These vessels have conducted limited transshipments in the Convention Area in recent years. Thus, the requirement to carry an observer during at-sea transshipment or the suspension of the requirement is not expected to affect vessel operations.

Overall, the proposed action would not be expected to cause substantial effects, either beneficial or adverse, on any of the affected fisheries.

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

Response: No. As stated in Section 1.1 of the SEA, NMFS is undertaking the proposed action to implement short-notice WCPFC decisions requiring immediate action that address relevant global or regional health, safety, and security concerns due to COVID-19, as well as other international emergencies and crises. The proposed action includes the temporary suspension of the following requirements for a period of time less than one year: purse seine observer coverage; the prohibition on purse seine transshipments at sea in areas under the national jurisdiction of the port State; and at-sea transshipment observers. Thus, the proposed action would be expected to mitigate effects to public health and safety from international emergencies and crises and would not be expected to cause adverse effects to public health and safety.

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 fishery, Hawaii-based longline fisheries, American Samoa-based longline fishery, and South Pacific albacore troll fishery generally do 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 1.3.9 and Section 2.9 of the SEA and in more detail under question 9 below. The proposed action would not affect designated critical habitat.

There are several National Wildlife Refuges and National Monuments in the affected environment (see Section 1.3.9.3 of the SEA). 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 the fishing activities do 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 1.3.9.3 of the SEA.

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 2.9 of the SEA, the fishing operations in the affected fisheries do not come into contact with the seafloor, so the operations of the affected vessels 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 Sections 2.1.2.6, 2.1.2.11, 2.2.2.4, 2.3, and 2.4 of the SEA, the main effects from the proposed action would be some potential for minor changes to purse seine fishing operations, due to a temporary suspension of restrictions on at-sea transshipment that are currently in effect. No substantial changes to fishing operations are expected in any of the affected fisheries. Thus, 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 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 SEA, the purpose of the proposed action is to implement short-notice WCPFC decisions to respond to urgent situations in a timely manner. The need for the proposed action is to satisfy the obligations of the United States as a Contracting Party to the Convention, pursuant to the authority of the WCPFC Implementation

Act. As described in sections 2.1.2.6, 2.1.2.11, 2.2.2.4, 2.3, and 2.4 of the SEA, the main effects from the proposed action would be some potential for minor changes to purse seine fishing operations, due to a temporary suspension of restrictions on at-sea transshipment that are currently in effect. The temporary suspension of purse seine observer coverage or at-sea transshipment observer coverage would not be expected to lead to substantial effects in any of the affected fisheries. No substantial changes to fishing operations are expected in any of the affected fisheries. Therefore, the effects from the proposed action are not likely to be highly uncertain. 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 SEA, the purpose of the proposed action is to implement short-notice WCPFC decisions to respond to urgent situations in a timely manner. The need for the proposed action is to satisfy the obligations of the United States as a Contracting Party to the Convention, pursuant to the authority of the WCPFC Implementation Act. Thus, the proposed action is limited to an immediate and focused objective and it does not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. Moreover, the proposed action is temporary in nature and would be in place for less than one year.

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 fisheries absent the management measures that are being or would be implemented under the identified actions (see Section 2.12 of the SEA). Based on all information to date, the proposed action would not be expected to lead to substantial cumulative impacts. 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 2.9 of the SEA, such resources would not be affected because any potential changes in fishing patterns of the fisheries would take place in areas of the ocean far from shorelines and would not affect the seafloor or benthic habitats since the fishing do 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, the 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 1.3.9.1 and Section 2.9 of the SEA present the analysis of effects to species listed under the Endangered Species Act (ESA) from the proposed action.

The U.S. western and central Pacific Ocean (WCPO) purse seine fishery, the Hawaii deep-set and shallow-set longline fisheries, the American Samoa longline fishery, and the South Pacific albacore troll fishery are the fisheries expected to experience minimal, if any, changes to fishing patterns and practices from the proposed action.

The most recent biological opinion for the continued operation of the U.S. WCPO purse seine fishery for ESA-listed species under NMFS jurisdiction was completed on November 1, 2006.

This opinion concluded that the fishery is not likely to jeopardize the continued existence of the green turtle (*Chelonia mydas*), the hawksbill turtle (*Eretmochelys imbricata*), 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*), or the sperm whale (*Physeter macrocephalus*). Since the issuance of this biological opinion, several species under NMFS jurisdiction have been newly listed under the ESA.

NMFS has reinitiated formal ESA Section 7 consultation for species under the jurisdiction of NMFS for the U.S. WCPO purse seine fishery. By memorandum dated February 23, 2021, NMFS determined that continuation of the fishery during the period of consultation is not likely to jeopardize the continued existence of any ESA-listed species and would not constitute an irreversible or irretrievable commitment of resources under ESA Section 7(d).

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

The 2019 Biological Opinion for the Hawaii shallow-set longline fishery analyzed the effects of the fishery on the following: the leatherback turtle; the North Pacific distinct population segment (DPS) of the loggerhead turtle; the Eastern Pacific DPS of the green turtle; the Central North Pacific DPS of the green turtle; the East Indian-West Pacific DPS of the green turtle; the Central West Pacific DPS of the green turtle; the Southwest Pacific DPS of the green turtle; the Central South Pacific DPS of the green turtle; the olive ridley turtle; the hawksbill turtle; the Guadalupe fur seal (*Arctocephalus townsendi*); the Hawaiian monk seal (*Monachus schauinslandi*); the MHI insular false killer whale (*Pseudorca crassidens*); the Central America DPS of the humpback whale; the Mexico DPS of the humpback whale; the fin whale; the blue whale; the North Pacific right whale (*Eubalaena japonica*); the sei whale; the sperm whale; the Southern Resident DPS of the killer whale (*Orcinus orca*); the Eastern Pacific DPS of the scalloped hammerhead shark

(*Sphyrna lewini*); the oceanic whitetip shark (*Carcharhinus longimanus*); the giant manta ray (*Manta birostris*); the central California coast coho salmon (*Oncorhynchus kisutch*); the Central valley spring-run Chinook salmon (*Oncorhynchus mykiss*); the Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*); the Central California coast steelhead (*Oncorhynchus mykiss*); the California coast steelhead (*Oncorhynchus mykiss*); and the Southern North American green sturgeon (*Acipenser medirostris*). The 2019 BiOp also analyzed the effects of the fishery on the following designated critical habitat: leatherback turtle critical habitat; Hawaiian monk seal critical habitat; MHI false killer whale critical habitat; stellar sea lion critical habitat; central California coast coho salmon critical habitat; Sacramento River winter run Chinook salmon critical habitat; California coast steelhead critical habitat; North American green sturgeon critical habitat; and black abalone critical habitat. The 2019 BiOp indicated that a limited number of these species could be adversely affected by the fishery: the leatherback turtle; the North Pacific DPS of the loggerhead turtle; the six DPS of the green turtle that occur in the Pacific Ocean; the olive ridley turtle; the oceanic whitetip shark; the giant manta ray; and the Guadalupe fur seal. The 2019 BiOp concluded that the continued operation of the Hawaii shallow-set longline fishery is not likely to jeopardize the continued existence of those species, and would not destroy or adversely modify designated critical habitat.

NMFS completed the Biological Opinion on Continued Operation of the Hawaii-based Deep-set Pelagic Longline Fishery in 2014. Under the 2014 BiOp, NMFS determined that the Hawaii deep-set longline fishery was not likely to jeopardize the continued existence for humpback whales, sperm whales, MHI insular false killer whales, North Pacific loggerhead turtles, leatherback turtles, olive ridley turtles, green turtles, and the Indo-West Pacific DPS of the scalloped hammerhead shark. The 2017 Supplemental Biological Opinion for the fishery concluded that the fishery was not likely to jeopardize the continued existence of the North Pacific DPS of the loggerhead turtle, the olive ridley turtle, six DPS of the green turtle occurring in the Pacific Ocean, nor result in the destruction or modification of critical habitat. Consultation for the Hawaii deep-set fishery was reinitiated on October 4, 2018, due to reaching several reinitiation triggers including new ESA-listings of the giant manta ray and oceanic whitetip shark as threatened species, the designation of critical habitat for the Main Hawaiian Islands Insular false killer whale, and the exceedance of the ITS for the East Pacific green sea turtle DPS from the 2017 Supplemental BiOp. By memorandum dated December 18, 2020, NMFS concluded that the determinations in the 2014 BiOp, as supplemented, remained valid, and the continued authorization of the fishery during the period of reinitiated consultation would not violate ESA Section 7(a)(2) and 7(d). The memorandum also concluded that the continued authorization of the fishery during the period of consultation would not jeopardize the recently listed oceanic whitetip shark and giant manta ray.

The 2015 Biological Opinion concluded that the American Samoa longline fishery was not likely to jeopardize the green turtle, hawksbill turtle, leatherback turtle, olive ridley turtle, South Pacific DPS of the loggerhead turtle, Indo-West Pacific DPS of the scalloped hammerhead shark, and six species of reef-building corals. Consultation for the American Samoa deep-set longline fishery was reinitiated on April 3, 2019, due to reaching several reinitiation triggers including new ESA-listings of the giant manta ray, oceanic whitetip and chambered nautilus, and exceedance of the ITS limits for green sea turtles, hawksbill sea turtles and olive ridley turtles. By memorandum dated May 6, 2020, NMFS concluded that the determinations in the 2015 BiOp remained valid, and that the continued authorization of the fishery during the period of reinitiated

consultation would not violate ESA Section 7(a)(2) and 7(d). The memorandum also concluded that the continued authorization of the fishery during the period of consultation would not jeopardize the recently listed oceanic whitetip shark, giant manta ray, and chambered nautilus.

NMFS completed informal ESA Section 7 consultation for species under the jurisdiction of NMFS for the South Pacific albacore troll fishery (memoranda dated August 10, 2004; September 17, 2004; and October 7, 2004 (2004 Memoranda) and Letter dated September 17, 2020 (2020 Letter)). In the 2004 Memoranda, NMFS concluded that the continued operation of the U.S. South Pacific albacore troll fishery may affect but is not likely to adversely affect listed species for the following reasons: (1) there has been no documented or reported take of any listed species in this fishery; (2) the nature of the fishery, including the gear used, makes it highly unlikely that a listed species would be taken; and (3) although there have been limited sea turtle takes in the U.S. North Pacific albacore troll fishery, according to biologists, there have been no documented sea turtle takes in any commercial troll fisheries off of the east coast of the United States, making the likelihood that a listed sea turtle would be taken by the U.S. South Pacific albacore troll fishery extremely low. The 2020 Letter concluded that a proposed action for five longline vessels to explore albacore trolling in the south Pacific ocean may affect, but is not likely to adversely affect, the following species:

- Leatherback, loggerhead, olive ridley, green, and hawksbill sea turtles;
- Blue, fin, sei, and sperm whales;
- Indo-West Pacific DPS of scalloped hammerhead and oceanic whitetip shark,
- Giant manta ray;
- Chambered nautilus;
- Six reef-building corals – *Acropora globiceps*, *A. jacquelineae*, *A. retusa*, *A. speciosa*, *Euphyllia paradivisa*, and *Isopora crateriformis*; and
- Four giant clams (ESA-candidate species) – *Hippopus hippopus*, *Tridacna squamosa*, *T. derasa*, and *T. gigas*.

Based on the information available to date from the ESA consultation histories of the U.S. WCPO purse seine fishery, the Hawaii shallow-set longline fishery, the Hawaii deep-set longline fishery, the American Samoa longline fishery, and the South Pacific albacore troll fishery, continued authorization of these fisheries under existing management regimes for the foreseeable future would not have a substantial effect on ESA-listed species or designated critical habitat.

As stated in Section 2.9 of the SEA, under the proposed action there would be a reduction in purse seine observer coverage that would lead to less data being collected on interactions of vessels in the fishery with ESA-listed species. Although the lack of observer data or reduced observer data may affect the quality and quantity of information collected on interactions with ESA-listed species in the fishery, the temporary specification regarding purse seine observer coverage would be in effect for a limited period of time – less than one year. In addition, other sources of data on the fishery would still be collected (e.g., from logbook information and vessel monitoring systems). Thus, although the collected data under the proposed action could be of lesser quality than under the No-Action Alternative, the proposed action would not be expected to substantially affect the overall information collected or to substantially modify the effects of the fishery on ESA-listed species.

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 SEA, the purpose of the proposed action is to implement short-notice WCPFC decisions to respond to urgent situations in a timely manner. The need for the proposed action is to satisfy the obligations of the United States as a Contracting Party to the Convention, pursuant to the authority of the WCPFC Implementation Act. 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 (MMPA)?

Response: No. The U.S. WCPO purse seine fishery corresponds to the following fisheries on the 2021 List of Fisheries (LOF). South Pacific Tuna Fisheries – purse seine gear and Western Pacific Pelagic Fisheries – purse seine gear. Both of these fisheries are listed as Category II fisheries 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. MMPA 101(a)(5)(E) authorizations are required for commercial fisheries with frequent or occasional incidental mortality or serious injury (M&SI) of ESA-listed marine mammals, as documented on the LOF. Authorizations are not required for commercial fisheries involving a remote likelihood of or no known incidental taking of marine mammals. Because these fisheries have no documented incidental M&SI of ESA-listed marine mammals on the 2021 LOF, a 101(a)(5)(E) authorization under the MMPA is not required at this time.

The Hawaii deep-set longline fishery is a Category I fishery under the regulations implementing the MMPA, meaning that it is a commercial fishery with frequent serious injuries and mortalities of marine mammals. As stated above, humpback whales, sperm whales, MHI insular false killer whales are the ESA-listed marine mammals that may be adversely affected by the fishery. By memorandum dated December 18, 2020, NMFS concluded that continued authorization of the fishery during the period of reinitiated consultation would not violate ESA Section 7(a)(2) and 7(d) for these species.

The Hawaii shallow-set longline fishery is 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. The 2019 Biological Opinion stated that the Guadalupe fur seal could be adversely affected by the Hawaii shallow-set longline fishery. The 2019 BiOp concluded that the continued operation of the Hawaii shallow-set longline fishery is not likely to jeopardize the continued existence of this species.

On October 16, 2014, NMFS authorized a permit under the MMPA section 101(a)(5)(E), addressing the Hawaii longline shallow-set and deep-set fisheries' interactions with ESA-listed species or depleted stocks of marine mammals (79 FR 62106). The permit authorizes the incidental, but not intentional, taking of ESA-listed humpback whales, sperm whales (Hawaii stock), and MHI insular false killer whales to vessels registered in the Hawaii deep-set and shallow-set fisheries. In issuing this permit, NMFS determined that incidental taking by the

Hawaii longline fisheries will have a negligible impact on the affected stocks of marine mammals. NMFS has prepared a draft negligible impact determination to update the 2014 MMPA permit, but the permit under MMPA Section 101(a)(5)(E) remains valid and effective until replaced in accordance with 5 U.S.C. § 558(c). Since the issuance of this permit, the Central North Pacific humpback whale was designated a DPS and is not a listed species under the ESA (81 FR 62259, September 8, 2016).

American Samoa longline fishery and the South Pacific albacore troll fishery are Category II fisheries on the 2021 LOF.

Thus, the fishing activities conducted under the proposed action would not result in impacts to marine mammals not previously considered in the List of Fishery's classification and the commercial fishery take authorization under MMPA section 118(c). Any changes resulting from the proposed action would not be expected to be substantial and are not expected to result in any increased impacts to marine mammals. Consequently, implementation of the proposed action is not expected to cause any impacts to marine mammals not previously considered or authorized by the commercial taking exemption under section 118(c) of the MMPA.

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

Response: No. The purpose of the proposed action is to implement short-notice WCPFC decisions to respond to urgent situations in a timely manner.

As described in Sections 2.1.2.6, 2.1.2.11, 2.2.2.4, 2.3, and 2.4 of the SEA, the main effects from the proposed action would be some potential for minor changes to purse seine fishing operations, due to a temporary suspension of restrictions on at-sea transshipment that are currently in effect. No substantial changes to fishing operations are expected in any of the affected fisheries. Thus, no adverse effects to managed fish species are anticipated from the proposed action.

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 2.9 of the SEA, 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 in the fisheries 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 not be substantial, 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: No. The proposed action would not affect vulnerable marine or coastal ecosystems. As stated in Section 2.9, potential changes in fishing patterns and practices in the fisheries would take place in areas of the ocean far from shorelines and would not affect the seafloor or benthic habitats since the fishing activities do 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.)?

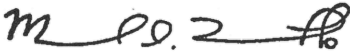
Response: No. As described in sections 2.1.2.6, 2.1.2.11, 2.2.2.4, 2.3, and 2.4 of the SEA, the main effects from the proposed action would be some potential for minor changes to purse seine fishing operations, due to a temporary suspension of restrictions on at-sea transshipment that are currently in effect. No substantial changes to fishing operations are expected in any of the affected fisheries. 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 sections 2.1.2.6, 2.1.2.11, 2.2.2.4, 2.3, and 2.4 of the SEA, the main effects from the proposed action would be some potential for minor changes to purse seine fishing operations, due to a temporary suspension of restrictions on at-sea transshipment that are currently in effect. No substantial changes to fishing operations are expected in any of the affected fisheries. Although a minor 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 fisheries 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 SEA prepared for the rulemaking titled “Implementation of Emergency Decisions of the Western and Central Pacific Fisheries – RIN 0648-BJ86,” NOAA has determined that the rulemaking titled “Implementation of Emergency Decisions of the Western and Central Pacific Fisheries – RIN 0648-BJ86” 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.



Regional Administrator
Pacific Islands Regional Office

05/19/2021
Date