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Finding of No Significant Impact

Initial Implementation of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean

This Finding of No Significant Impact (FONSI) was prepared according to the guidelines established in National Marine Fisheries Service (NMFS) Instruction 30-124-1 and the requirements set forth in the National Oceanic and Atmospheric Administration's (NOAA) Administrative Order (NAO 216-6, May 20, 1999). The FONSI is based on the Environmental Assessment (EA) prepared pursuant to the requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. § 4321 et seq.) to analyze the potential impacts on the human environment from promulgation of the rule (RIN 0648-AX63), "Initial Implementation of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean."

Background

The Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention) was signed in Honolulu in September 2000 and came into force in June 2004. The Convention was ratified by, and came into force for, the United States in 2007. As a Party to the Convention, the United States has an international obligation to implement the Convention's provisions. The authority to do so is established by the Western and Central Pacific Fisheries Convention Implementation Act, Pub. L. 109-479, Sec 501, et seq., and codified at 16 U.S.C. § 6901 et seq. (WCPFCIA), which became law in 2007. Pursuant to the WCPFCIA, NMFS is promulgating regulations that would implement the provisions of the Convention that are fully specified; that is, provisions for which no further action is required by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) prior to implementation.

The regulations would establish requirements related to the operation of U.S. fishing vessels that are used for commercial fishing for highly migratory species (HMS) in the area of application of the Convention (Convention Area). U.S. vessels from three major sectors, purse seine, longline, and albacore troll, engage in HMS fishing on the high seas in the Convention Area. U.S. vessels from other sectors, including pole-and-line, handline, and tropical troll, may also be affected by the rule, as may U.S. support vessels, such as fish carriers and bunkers. The dominant U.S. fisheries for HMS in the Convention Area target skipjack tuna (*Katsuwonus pelamis*), yellowfin tuna (*Thunnus albacares*), bigeye tuna (*Thunnus obesus*), albacore (*Thunnus alalunga*), and swordfish (*Xiphias gladius*). The total catch of tuna made by the United States in the Convention Area is about four percent of the total tuna catch made by all nations operating in the area, as indicated in Table 20 of the EA.

The Convention's provisions to be implemented in the rule (hereafter "U.S. Initial Implementation Rule") fit into one of two categories: (1) provisions that allow NMFS discretion in methods and means to implement them, or provisions for which reasonable and feasible alternatives can be considered and analyzed; and (2) provisions that do not afford such discretion, or provisions for which no reasonable and feasible alternatives exist. The EA analyzed four action alternatives for the provisions in the discretionary category and considered the non-discretionary provisions as part of the cumulative impacts analysis,

essentially as separate present actions for the purposes of the analysis. The discretionary provisions are as follows: (1) requiring U.S. commercial fishing vessels fishing for HMS on the high seas in the Convention Area to obtain an authorization-to-fish; (2) requiring the collection of information specified under Annex IV to the Convention for all U.S. vessels authorized to commercially fish for HMS in the Convention Area beyond the area of U.S. jurisdiction; (3) requiring VMS units to be carried and used by all U.S.-flagged vessels commercially fishing for HMS on the high seas in the Convention Area; and (4) requiring that U.S.-flagged commercial fishing vessels, when on the high seas in the Convention Area, accept boarding and inspection from authorized inspectors in accordance with procedures established by the WCPFC. The non-discretionary provisions, or provisions for which no reasonable and feasible alternatives exist, include the following: (1) requiring U.S. commercial fishing vessels fishing for HMS on the high seas in the Convention Area to accept on board and accommodate observers deployed as part of the WCPFC Regional Observer Program; (2) requiring commercial fishing vessels fishing for HMS on the high seas in the Convention Area to include specific identification markings; (3) prohibiting transshipment activities for U.S. purse seine vessels operating in the Convention Area; (4) requiring U.S. vessels used for commercial fishing for HMS anywhere in the Pacific Ocean to maintain and submit to NMFS information on fishing effort and catch; (5) requiring U.S. vessels used for commercial fishing for HMS in the Convention Area to comply with the relevant laws of other nations; and (6) procedures for protecting the confidentiality of information.

As stated above, NMFS analyzed four action alternatives in the EA, as well as the No-Action or baseline alternative. The action alternatives were crafted with two objectives in mind. First, they captured a wide range of possible combinations of the discretionary provisions in terms of their degree of restrictiveness, so as to facilitate analysis of a wide range of possible environmental consequences as well as a range of burdens on fishermen and effectiveness in terms of fishery management objectives. Second, the alternatives were crafted to identify combinations that make good practical sense. The U.S. Initial Implementation Rule implements Alternative D as the preferred alternative because it would achieve what NMFS believes is the best balance between the compliance costs that would be imposed on fishermen and the effectiveness of the resulting management regime.

As set forth below, this FONSI discusses the potential environmental impacts – including direct, indirect, and cumulative impacts – that could be caused by the U.S. Initial Implementation Rule's implementation of the discretionary provisions under Alternative D and the non-discretionary provisions, as analyzed in the cumulative impacts analysis.

Significance Analysis

NAO 216-6 contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations for implementing NEPA at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to making this FONSI and has been considered individually, as well as in combination with the others.

The significance of the implementation of the U.S. Initial Implementation Rule is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

<u>Response</u>: No. Skipjack tuna, yellowfin tuna, bigeye tuna, albacore, and swordfish are the principal target species that would be affected by the implementation of Alternative D, as shown in Table 5 in Section 3.2.1 of the EA. As stated in Section 4.1 of the EA, the main effect of the discretionary requirements is

that they would, to varying degrees, make it more costly to fish, and thus provide a disincentive to fish, at least in the area of application of the requirement. However, the magnitude of the potential increases in fishing costs for any given vessel or fishing business are expected to be quite small relative to the total costs of fishing. Thus, the resulting disincentive to fish in the proposed requirements' area of application is expected to be correspondingly small. None of the requirements would directly control fishing practices per se, such as how much fishing effort is exerted, how much of a given resource may be caught, where fishing may take place, what type of fishing gear may be used, or how fishing gear may be deployed. None of the requirements would authorize or open up the possibility for a new fishery or expand fishing opportunities. None of the requirements would be anticipated to result in an increase in fishing effort in the Convention Area, and none would be expected to result in marked changes in fishing patterns anywhere. As shown in Table 40 of the EA, the non-discretionary provisions would also impose an economic burden on fishermen, but the expected burden is minor relative to the total gross revenue earned by each fishing vessel. Accordingly, the burden of the nondiscretionary provisions, added to that of the discretionary provisions, would enhance the likelihood and/or magnitude of the expected impacts of the discretionary provisions, but only slightly so.

At most, the requirements would result in slight decreases in longline and/or albacore troll fishing effort on the high seas in the Convention Area, and correspondingly slight increases in other areas. In the case of the longline fishery, any shift in fishing effort within the western and central Pacific Ocean (WCPO) would, given the available information about the stock structure of the main target species (bigeye tuna, yellowfin tuna, and swordfish), constitute a shift within the same stocks. A shift from the WCPO to the eastern Pacific Ocean (EPO) could mean a shift from WCPO stocks to EPO stocks, but it would be a shift in the fishing effort of the west-coast based fleet, which is small, so the magnitude of the shift and any consequent impacts on target stocks would be expected to be minor.

In the case of the albacore troll fishery, a shift in fishing effort in the North Pacific from the WCPO to the EPO would constitute a shift within the same stock of North Pacific albacore. Vessels that fish in the South Pacific generally also fish in the North Pacific in any given year (each area during their respective seasons), so a decrease in fishing effort in the South Pacific would not result in a corresponding increase in fishing effort in the North Pacific. It is possible that such vessels would shift some of their effort to other fisheries and stocks, but again, the magnitude of any such shift is expected to be small. Thus, overall, the implementation of the U.S. Initial Implementation Rule would not affect the sustainability of any target species.

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

Response: No. As described in the response to question 1, above, none of the requirements are expected to have substantial effects on fishing patterns. At most, they would result in slight decreases in longline and/or albacore troll fishing effort on the high seas in the Convention Area, and correspondingly slight increases in other areas.

As for the target species, in the case of the longline fishery, any shift in fishing effort within the WCPO would, for most non-target fish species, probably constitute a shift within the same stocks. A shift from the WCPO to the EPO could mean a shift from WCPO stocks to EPO stocks, but it would be a shift in fishing effort of the west-coast based fleet, which is small, so the magnitude of the shift and any consequent impacts on non-target fish stocks would be expected to be minor.

The albacore troll fishery has very little catch of any species other than albacore, so any changes in fishing effort on, and catches of, non-target fish species (e.g., from a stock in the WCPO to a different stock in the EPO) would be small. It is possible that some albacore troll vessels would shift some of their

effort to other fisheries and species (including other non-target stocks), but again, the magnitude of any such shift is expected to be small.

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and identified in FMPs?

Response: No. As described in Section 4.2.6 of the EA, implementation of Alternative D 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. None of the requirements are expected to have substantial effects on fishing patterns and any geographical shifts in fishing effort would be minor and increased fishing effort would not occur in areas designated as EFH, HAPC, or ocean and coastal habitats. For example, none of the requirements would be expected to affect the frequency or locations of port calls by fishing and support vessels, or to result in fishing vessels or support vessels spending more time in nearshore or shallow waters.

With respect to ocean habitats, the deepest that fishing gear is deployed by the fisheries affected by the proposed action is about 300 meters (longline gear). None of the requirements is expected to impact the ocean's benthic habitats or any habitats deeper than about 300 meters. As described above, none of the requirements are expected to have substantial effects on fishing patterns. At most, they would result in slight decreases in longline and/or albacore troll fishing effort on the high seas in the Convention Area, and correspondingly slight increases in other areas. Any shift in fishing effort as a result of the implementation of Alternative D would likely be too small to have any discernible effect on ocean habitats.

The relevant areas of EFH and HAPC are described in Section 3.1.2. Any shift in fishing effort in these areas would likely be small and thus, would cause no substantial damage.

As discussed above, the economic burden of the nondiscretionary provisions, added to that of the discretionary provisions, would enhance the likelihood and/or magnitude of the expected impacts of the discretionary provisions, but only slightly so.

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

Response: No. As indicated in Section 4.2.9 in the EA none of the requirements propose anything that would make fishermen act in any way that would be considered less safe to themselves or others. The VMS element of the requirements might bring positive impacts with respect to safety at sea, particularly for search and rescue, since vessels' positions would periodically be transmitted to NOAA and VMS units often have built-in Emergency Position Indicating Radio Beacons that indicate the last reported location of the vessel. None of the requirements would have any effects on the way the catch is captured, handled, or processed such that product quality would be affected, so none of the requirements would have any impacts in terms of the safety of seafood that reaches the public. Substantial adverse impacts on public health or safety are not anticipated to result from the implementation of the discretionary provisions under Alternative D or from the nondiscretionary provisions.

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

Response: No. As described above, none of the requirements are expected to have substantial effects on fishing patterns. At most, fishing patterns would result in slight decreases in longline and/or albacore troll fishing effort on the high seas in the Convention Area, and correspondingly slight increases in other areas.

In the case of the longline fishery, a shift in fishing effort could result in slightly different interaction patterns with sea turtles and marine mammals, but given that such a shift would involve only a portion of the fishing effort of just a few vessels, any consequent impacts on those species – whether adverse or beneficial, is expected to be very small. A shift in fishing effort from the WCPO to the EPO is possible, but it would be a shift in the fishing effort of the west-coast based fleet, which is small, so the magnitude of the shift and any consequent impacts on protected species would be minor.

As described in Section 3.2.3 of the EA the albacore troll fishery has very few interactions with protected species in both the WCPO and EPO, so any geographical shift in fishing effort is not likely to result in any change in interaction patterns with any protected species. It is possible that some albacore troll vessels would shift some of their effort to other fisheries, but again, the magnitude of any such shift is expected to be small.

None of the requirements is expected to result in any changes in fishing practices such as gear configuration, gear deployment, fishing times, or catch handling practices, so no impacts to protected species or critical habitat as a result of such changes are expected.

Via correspondence dated October 22, 2008, the International Fisheries Program of NMFS Pacific Islands Regional Office (PIRO) requested initiation of informal consultation with the Protected Resources Division of PIRO and the U.S. Fish and Wildlife Service with respect to the U.S. Implementation Rule under Section 7(a)(2) of the Endangered Species Act (ESA) and its implementing regulations. By letter dated January 28, 2009, the U.S. Fish and Wildlife Service (USFWS) concluded the Section 7 informal consultation process for species under its jurisdiction, by concurring with NMFS' determination that the U.S. Initial Implementation Rule would not be likely to adversely affect ESA-listed species under the jurisdiction of USFWS.

The Protected Resources Division of PIRO reviewed the request for initiation of informal consultation and by memorandum dated November 3, 2008, determined that the U.S. Initial Implementation Rule would not modify fishery operations in any manner affecting ESA-listed marine species or their designated critical habitat that was not considered in prior consultation, and that therefore initiation or reinitiation of ESA Section 7 consultation was not required. The Protected Resources Division of PIRO stated that the U.S. fisheries to which the Convention applies have already undergone the following six ESA consultations by NMFS: (1) formal consultation on implementation of the Pelagics Fisheries Management Plan for the Western and Central Pacific (covering longline, trolling, pole-and-line, and handline fisheries in the Western Pacific) (completed in 2004); (2) formal consultation on implementation of the U.S. West Coast Highly Migratory Species Fisheries Management Plan (covering the west coast drift gillnet and north Pacific albacore trolling fisheries (completed in 2004); (3) informal consultation on the south Pacific albacore trolling fishery (completed in 2004); (4) formal consultation on the Hawaii deep-set longline fishery (completed in 2005); (5) formal consultation on the Western and Central Pacific purse seine fishery (completed in 2006); and (6) formal consultation on the Hawaii shallow-set longline fishery (completed in 2008). In addition, by memorandum dated November 3, 2008, the Protected Resources Division of PIRO determined that the U.S. Initial Implementation Rule would not cause any impacts to marine mammals not previously considered or authorized by the commercial taking exemption under section 118 of the Marine Mammal Protection Act.

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: No. As indicated in Section 4.2.5 of the EA, in general, an increase in fishing effort in any given location, leads to an increase in the consequent fishing mortality (on target and non-target species) affecting biodiversity and ecosystem function. However, as described above, Alternative D is not expected to have substantial effects on fishing patterns. At most, it would result in slight decreases in longline and/or albacore troll fishing effort in current fishing areas and correspondingly slight increases in other areas. Any shift in fishing effort as a result of any of the proposed requirements would likely be too small to have any discernible effect on biodiversity or ecosystem function. As discussed above, the economic burden of the nondiscretionary provisions, added to that of the discretionary provisions, would enhance the likelihood and/or magnitude of the expected impacts of the discretionary provisions, but only slightly so.

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

Response: No. Based on the economics of the different fleets, as described in Sections 3.3.2.3.4, 3.3.2.4.1.4, 3.3.2.4.2.4, 3.3.2.4.3.4, and 3.3.2.5.4 of the EA and as discussed throughout Chapter 4 of the EA, the economic burden on vessel owners/operators from implementing the discretionary provisions under Alternative D or the nondiscretionary provisions could be sufficient to change the behavior (i.e. fishing patterns) of some of those owners/operators and as a consequence possibly cause impacts to the natural and physical environments. However, as indicated in Tables 38, 39, and 40 of the EA, the compliance costs would not be substantial and the resulting environmental effects would likely be minor, as described throughout Chapter 4 of the EA and in the responses to the preceding questions.

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

Response: No. The EA was issued for public comment for a period of 30 days. Three comment letters were received in response to the proposed rule, one of which raised matters pertaining to the EA. The comment letter requested that the EA include additional information on the following matters: (1) certain costs that the U.S. Initial Implementation Rule would impose on fishermen; (2) additional description or analysis of the non-discretionary provisions of the rule; (3) specific information on the reporting and recordkeeping requirements of the rule; (4) information regarding outreach to inform vessel owners and operators of possible boarding and inspection by non U.S. parties; and (5) clarification regarding Table 41 of the EA. The comments have been addressed in the preamble to the final rule – please see Comment 1, Comment 9, Comment 11, Comment 20, Comment 21, Comment 22, Comment 24, Comment 27, and Comment 28 – and do not indicate that the effects on the quality of the human environment from the proposed action are likely to be highly controversial.

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

Response: No. As described in Section 3.1.3 of the EA, there are several National Wildlife Refuges and National Marine Monuments in the affected environment. As indicated in Section 4.2.6 of the EA, aside from the Guam National Wildlife Refuge, the refuges described in Section 3.1.3 are not located in areas where there could be changes in fishing effort, and the potential slight increase in fishing effort in the area near the Guam National Wildlife Refuge would likely be too small to have a substantial impact on the Guam National Wildlife Refuge. Of the National Monuments described in Section 3.1.3, the Marianas Trench Marine National Monument is the only one that is located in an area that could experience slight changes in fishing effort. However, as for the Guam National Wildlife Refuge, this slight change in fishing effort likely would be too small to adversely affect the monument.

Fishing vessels that would be affected by this proposed action might transit close to National Wildlife Refuges or National Marine Monuments when approaching and departing ports, but the U.S. Initial Implementation Rule is not expected to affect the location or frequency of port calls, so no effects stemming from such transit are expected as a result of this action.

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

Response: No. As stated throughout the EA, although the magnitude of the effects on the human environment cannot be quantified with certainty, the types of effects and the direction of those effects can be predicted with a useful degree of certainty. As indicated in Section 4.2.12 of the EA, there is some uncertainty in the analyses of expected effects on fisheries from the implementation of Alternative D, such as, it is not very certain as to how many owners/operators of vessels in the albacore troll fishery would change their fishing patterns as a result of each of the requirements or to what degree the patterns would change.

As stated above, the main effect of the discretionary requirements under Alternative D is that they would, to varying degrees, make it more costly to fish, and thus provide a disincentive to fish, at least in the area of application of the requirement. However, the magnitude of the potential increases in fishing costs for any given vessel or fishing business are expected to be quite small relative to the total costs of fishing. Thus, the resulting disincentive to fish in the proposed requirements' area of application is expected to be correspondingly small and at the most, the requirements would result in slight decreases in longline and/or albacore troll fishing effort on the high seas in the Convention Area, and correspondingly slight increases in other areas. Because Alternative D would result in no anticipated changes in fishing practices and only slight changes in fishing effort, the effects on the human environment are not expected to be highly uncertain or involve unique or unknown risks. As shown in Table 40 of the EA, the non-discretionary provisions would also impose an economic burden on fishermen, but the expected burden is minor relative to the total gross revenue earned by each fishing vessel. Accordingly, the burden of the nondiscretionary provisions, added to that of the discretionary provisions, would enhance the likelihood and/or magnitude of the expected impacts of the discretionary provisions, but only slightly so.

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: No. Section 4.2.13 of the EA presents the cumulative impacts analysis. The potential environmental impacts of the non-discretionary provisions of the U.S. Initial Implementation Rule were analyzed as other present actions as part of the cumulative impacts analysis. The implementation of Alternative D in combination with other past, present and all reasonably foreseeable future actions would likely impose a burden on fishermen that would be greater than if Alternative D were implemented alone, but the expected burden is minor relative to the total gross revenue earned by individual fishing vessels. Accordingly, the burden of all the actions combined would enhance the likelihood and/or magnitude of the expected impacts of the proposed action, but only slightly so. Thus, the overall cumulative impacts are not expected to be significant or adverse.

12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: No. Items eligible for listing or listed in the National Register of Historic Places or significant scientific, cultural, or historical resources are not located in the affected environment, and thus, would not be affected by the implementation of the U.S. Initial Implementation Rule.

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

Response: No. As indicated in Section 4.2.4 of the EA, the discretionary requirements are not expected to result in any changes in fishing patterns or practices that could be related to the introduction, spread, or distribution of non-indigenous species. The frequency and locations of port calls by fishing vessels are not expected to be affected and although slight shifts in the geographical distribution of fishing effort might occur, none of the shifts would involve movement of fishing vessels into areas that are not already routinely visited and fished. As discussed above, the nondiscretionary provisions, added to that of the discretionary provisions, would enhance the likelihood and/or magnitude of the expected impacts of the discretionary provisions, but only slightly so.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Response: No. Implementation of the U.S. Initial Implementation Rule would establish the initial set of regulations needed to satisfy the international obligations of the United States as a party to the Convention, pursuant to the authority of the WCPFCIA. Thus, the rule is limited to an immediate and focused objective and it does not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration.

15) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: No. As stated above, the U.S. Initial Implementation Rule will establish the initial set of regulations needed to satisfy the international obligations of the United States as a party to the Convention. As such, the U.S. Initial Implementation Rule would not be expected to violate any laws or requirements imposed for the protection of the environment.

16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: No. See the response to #11 above for a discussion of cumulative effects. The implementation of Alternative D in addition to the other identified actions would not result in cumulative adverse effects that could have a substantial effect on target species or non-target species.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting EA prepared for the rule "Initial Implementation of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean," it is hereby determined that the proposed action will not significantly impact the quality of the human environment as described above and in the supporting EA. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

William L Robinson

DEC 1 8 2009

Regional Administrator
Pacific Islands Regional Office

Date