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Finding of No Significant Impact

Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2013 and 2014 RIN 0648-BC87

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-BC87), "Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2013-2014."

Background

At its Ninth Regular Session, in December 2012, the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC) adopted Conservation and Management Measure (CMM) 2012-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean." Among other provisions, CMM 2012-01 includes provisions for the management of purse seine fisheries operating in the western and central Pacific Ocean (WCPO). Pursuant to the authority of the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), the National Marine Fisheries Service (NMFS) is promulgating a rule to implement the provisions of CMM 2012-01 for the U.S. purse seine fleet operating in the WCPO that need to be implemented via regulations at this time. These provisions include the following: (1) limits on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone (EEZ) and on the high seas; (2) restrictions on the use of fish aggregating devices (FADs); and (3) requirements for U.S. purse seine vessels to carry observers.

NMFS prepared an EA that analyzed three action alternatives for implementing the purse seine provisions of CMM 2012-01, as well as the No-Action Alternative. Each of the action alternatives includes a different variation of the fishing effort limits. NMFS identified two variations for implementing the FAD restrictions, which were incorporated into the three action alternatives. NMFS identified only one manner of implementing the observer requirements, so all the action alternatives include identical observer requirements. Alternative 1 is the No-Action Alternative. Alternative 2 includes the most restrictive fishing effort limits as well as the FAD restrictions prohibiting fishing on FADs during certain periods. Alternative 3 includes the fishing effort limits based on past regulatory precedent, and FAD restrictions prohibiting fishing on FADs and setting on fish that have aggregated in association with a vessel during certain periods. Alternative 4 includes the least restrictive fishing effort alternative as well as FAD restrictions prohibiting fishing on FADs during certain periods. The rule implements Alternative 3,

which includes neither the most restrictive nor the least restrictive fishing effort limits, but rather, is based on similar fishing effort limits established in past regulations. The FAD restrictions under Alternative 3 are expected to serve CMM 2012-01's objective of reducing the tuna stocks' fishing mortality rates through seasonal prohibitions on the use of FADs better than the variation for this element of the rule considered under Alternatives 2 and 4. For the purposes of this document, the term "proposed action" refers to Alternative 3.

The February 2013 version of the EA was made available to the public in conjunction with the publication of the proposed rule. The four comment letters submitted during the comment period on the proposed rule did not raise any issues regarding the information in the EA.

Significance Analysis

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

The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

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

Response: No. The target species of the U.S. WCPO purse seine fishery are skipjack tuna and yellowfin tuna, with bigeye tuna being an incidentally caught species. As stated in Section 4.3 of the EA, the proposed action would likely lead to some direct beneficial impacts on the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna by reducing the fishing mortality on juveniles of all three tuna stocks and adult skipjack tuna during the period of application of the FAD restrictions and by a potential overall reduction in fishing effort from the implementation of the fishing effort limits. The FAD restrictions could also have some adverse effects on the WCPO stock of yellowfin tuna by an increase in the overall fishing mortality on the stock as a result of the fleet targeting large unassociated schools of tunas during the period of application of the FAD restrictions. Any adverse effects would be ameliorated by reduced catches of juvenile yellowfin tuna during the period of application of the restrictions, which may have a chance to move or recruit to a deeper, non-predominantly FAD associated life cycle that would provide benefits in terms of additional adult yellowfin tuna available to unassociated fishing.

The indirect effects of the proposed action on bigeye, skipjack, and yellowfin tuna stocks would likely be beneficial, since this alternative would be expected to result in some decreased fishing mortality on the stocks, which could lead to long-term positive effects on the stocks. However, these beneficial effects would be relatively small, because: (1) the FAD restrictions and fishing effort limits would only be in effect for two years – 2013 and 2014; and (2) this alternative would result in only a small reduction in the overall fishing mortality on these stocks. As described in Chapter 3 and Chapter 5 of the EA, the U.S. purse seine fleet contributes only a small portion of the total fishing mortality on these stocks, and the proposed action would reduce the fishing mortality of the stocks by only a small amount.

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

Response: No. Section 4.4 of the EA discusses the potential impacts to non-target fish species (other than bigeye tuna) from the proposed action. The proposed action could cause some change in the amount and type of non-target fish species caught by the U.S. WCPO purse seine fleet. During the period of application of the FAD restrictions, the fleet may fish in different areas than fished historically as a result of making unassociated rather than FAD sets, which would affect the composition of the catch, including both target stocks and non-target species, and the fishing effort limits could cause some shift in effort to the EEZs of Pacific Island Parties to the South Pacific Tuna Treaty (Treaty) (where the fleet expends the majority of its effort) or to the eastern Pacific Ocean (EPO). Direct impacts to non-target fish species could include a potential increase in the catch of some species and a decrease in the catch of other species, due to the changes in fishing patterns and practices of the fleet and the potential for an overall decrease in fishing effort due to implementation of the fishing effort limits and any associated fishery closure. Indirect or long-term effects would include the greater potential for adverse effects to the stocks of non-target fish species that experience increased fishing mortality and reduced potential for adverse effects to the stocks of non-target fish species that experience decreased fishing mortality. Because the U.S. WCPO purse seine fleet does not generally catch large amounts of other non-target fish species (see Table 5 in Chapter 3 of the EA), the overall direct and indirect effects on non-target fish species would be negligible.

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

Response: No. As stated in Chapter 4, Section 4.5 of the EA, the proposed action would not cause any adverse impacts to areas designated as EFH or Habitat Areas of Potential Concern under MSA provisions, or to ocean and coastal habitats. Such resources would not be affected because the potential changes in fishing patterns and practices of the fleet would take place in areas of the ocean far from shorelines and would not affect the seafloor or benthic habitats since purse seine fishing does not involve contact with the seafloor (see Section 3.2 of the EA for a description of purse seine fishing). Also, because any effects to fish stocks would be minor or negligible, as discussed above, any pelagic fish habitat designated as EFH, including the water column, or HAPC, would not be expected to experience any substantial effects – either beneficial or adverse – from implementation of the proposed action.

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

Response: No. As indicated in the EA in Section 4.1.3.1, the only identified potential impact to public health and safety from the proposed action would be from the "race to fish" that could be caused by the implementation of the fishing effort limit provision. The rule implements the effort limit provision in a competitive manner (i.e., not allocated among individual vessels). Thus, vessel operators could have an incentive to fish harder in this zone earlier in the applicable limit period than they otherwise would in an attempt to fish as many fishing days as they can before the limit is reached. This "race to fish" effect could cause vessel operators to forego vessel maintenance or to fish in weather or ocean conditions than they otherwise would not. This could bring costs in terms of human safety as well as the performance of the vessel and its fishing gear and crew. The "race to fish" effect could also be expected in the time period between when a closure of the fishery due to a fishing limit being reached is announced and when the fishery is closed. However, given that the fleet expends most of its fishing effort in the EEZs of Pacific Island Parties to the Treaty, which would not be included in the effort limit, it is unlikely that any "race to fish" effect as a result of the effort limit on the high seas and in the U.S. EEZ would be pronounced. Thus, substantial adverse impacts on public health or safety are not anticipated to result from promulgation of the rule.

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

Response: No. As stated in Section 4.5 of the EA, the proposed action would not be expected to adversely affect species listed as endangered or threatened under the Endangered Species Act (ESA), their critical habitat or marine mammals. Data indicate that the U.S. purse seine fleet has had some interaction with marine mammals and sea turtles in the WCPO, and the U.S. WCPO purse seine fleet has not been known to interact with seabirds. The direct and indirect effects to marine mammals and sea turtles from the proposed action would likely be negligible. To the extent that there could be a reduction in fishing effort, any effect to ESA-listed species or critical habitat of these species would be beneficial, since there would be a reduced risk of interaction with the protected resource. To the extent that there is any change in fishing patterns and practices, any effects in terms of interactions with protected resources would be negligible compared to typical year-to-year variations in interactions with species driven by changing oceanic and economic conditions. As indicated in Table 1 of the EA, the spatial distribution of effort of the fleet varies considerably from year to year, and as indicated in Figure 8 of the EA, the proportion of FAD versus unassociated sets also varies from year to year, so the overall shifts in fishing patterns and practices of the fleet in a given year depend mostly on oceanographic and economic factors, which would not be affected by the proposed action. Moreover, the FAD restrictions and fishing effort limits would only be in effect for two years – 2013 and 2014. Thus, for these reasons, it is likely that there would be no net change in interactions stemming from implementation of the proposed action. The proposed action would not cause any effects to ESA-listed species that have not been addressed in prior consultations and would not cause additional impacts to marine mammals protected under 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. The purpose of the proposed action is to implement provisions of CMM 2012-01 for the U.S. WCPO purse seine fleet, in order to contribute to the underlying objectives of CMM 2012-01 regarding WCPO bigeye tuna, yellowfin tuna and skipjack tuna, which are to reduce or maintain their respective fishing mortality rates at levels no greater than the fishing mortality rates associated with maximum sustainable yield. As discussed in Section 3.4.1 and Section 4.3 of the EA, adult bigeye tuna, skipjack tuna, and adult yellowfin tuna are considered among the top predators of the tropical or warm pool marine ecosystem. Changes to WCPO stocks of these species could lead to trophic interactive effects, including increased competition for prey species with other top predators. Larval and juvenile tunas are also sources of food for other marine species, such as fish, seabirds, porpoises, marine mammals, and sharks. Thus, increases in larval and juvenile tuna could increase the food available for these other species. However, it is unlikely that the effects of the proposed action to the WCPO stocks of bigeye, skipjack, and yellowfin tuna, which would be short-lived given the limited duration of the rule, would be large enough to impact the marine ecosystem. Overall, the rule would not cause substantial effects on biodiversity and ecosystem function.

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

Response: No. As stated in the Regulatory Impact Review (RIR), some of the provisions of the rule could lead to substantial costs and/or revenue losses in the U.S. purse seine fleet. For example, the fact that the fleet has typically made a large portion of its sets on FADs suggests that prohibiting the use of FADs for four months each year may bring substantial costs and/or revenue losses to affected businesses. However, although these economic effects are somewhat speculative and unquantifiable, it is unlikely that these economic effects would substantially affect the fleet's current fishing patterns and practices. As stated in Section 4.1.3 of the EA, the primary direct effects of the rule in the U.S. WCPO purse seine

fishery are the following: (1) the fishing effort limit on the high seas and in the U.S. EEZ could cause the fleet to fish more in the EEZs of Pacific Island Parties to the Treaty or in the EPO and could cause a reduction in the total fishing effort of the fleet; and (2) the period of application of the FAD restrictions during July-October would likely transfer some fishing effort from FAD sets to unassociated and from setting on fish that have aggregated in association with a vessel to other unassociated set types, with consequent impacts in terms of species composition of the catch, and possibly shift fishing effort from that time to other periods of the year. As discussed throughout the EA, these direct effect on the fishery would not lead to substantial effects on the human environment – at the most, there could be some beneficial impacts on the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna, with the effects on other resources in the affected environment being none or negligible.

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

Response: No. As stated throughout the EA, the primary effects of the rule on the U.S. WCPO purse seine fishery are the following: (1) the fishing effort limit on the high seas and in the U.S. EEZ could cause the fleet to fish more in the EEZs of Pacific Island Parties to the Treaty or in the EPO and could cause a reduction in the total fishing effort of the fleet; and (2) the FAD restrictions during July-October would likely transfer some fishing effort from FAD sets to unassociated and from setting on fish that have aggregated in association with a vessel to other unassociated set types, with consequent impacts in terms of species composition of the catch, and possibly shift fishing effort from that time to other periods of the year. Overall, these effects could lead to some minor beneficial impacts on the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna, and it is unlikely that there would be any controversy regarding the size, nature, or effects of the action (i.e., the effects of the action on the quality of the human environment). Moreover, the EA was made available during the public comment period for the proposed rule and the four comment letters submitted did not raise any issues regarding the information in the EA.

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

Response: No. As described in Section 3.5.4 of the EA, there are several National Wildlife Refuges and National Monuments in the affected environment. However, these resources would not be affected because the potential changes in fishing patterns and practices of the fleet would take place in areas of the ocean far from shorelines and would not affect the seafloor or benthic habitats since purse seine fishing does not involve contact with the seafloor. In addition, as discussed in Section 3.5 of the EA, commercial fishing is already prohibited in the National Monuments, pursuant to the 2009 Presidential Proclamation.

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

Response: No. As described throughout the EA, although the magnitude of the effects on the human environment cannot be quantified with certainty, the types of effects and the direction of those effects can be predicted. The purpose of the proposed action is to implement the provisions of CMM 2012-01 for the U.S. WCPO purse seine fleet that are necessary to implement via regulations in 2013 in a timely and practical manner, in order to contribute to the underlying objectives of CMM 2012-01 regarding WCPO bigeye tuna, yellowfin tuna and skipjack tuna, which are to reduce or maintain their respective fishing mortality rates at levels no greater than the fishing mortality rates associated with maximum sustainable yield. The primary effects of the rule on the U.S. WCPO purse seine fishery are the following: (1) the fishing effort limit on the high seas and in the U.S. EEZ could cause the fleet to fish more in the EEZs of Pacific Island Parties to the Treaty or in the EPO and could cause a reduction in the total fishing effort of the fleet; and (2) the FAD restrictions during July-October would likely transfer some fishing effort from

FAD sets to unassociated sets and from setting on fish that have aggregated in association with a vessel to other unassociated set types, with consequent impacts in terms of species composition of the catch, and possibly shift fishing effort from that time to other periods of the year. Overall, these effects could lead to some minor beneficial impacts on the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna. Thus, the effects on the human environment from the proposed action would not be highly uncertain or involve unique or unknown risks.

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

Response: No. As discussed in Chapter 5 of the EA, the cumulative impacts on the resources in the affected environment that could be impacted by the proposed action (i.e., the WCPO stocks of bigeye tuna, skipjack tuna, and yellowfin tuna), from the proposed action, other present actions, and all reasonably foreseeable future actions, would likely be beneficial. However, it is unlikely that the current status of the stocks, using the NMFS status determination criteria, will change as a collective result of all of these actions – though this is difficult to predict without knowing the details of the reasonably foreseeable future actions. Therefore, the cumulative impacts from implementation of the proposed action would not be expected to lead to substantial cumulative impacts on the status of the stocks of bigeye tuna, skipjack tuna, and yellowfin tuna in the WCPO, and no significant cumulative impacts on the human environment are anticipated from implementation of the proposed action.

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

Response: No. As stated in Section 4.5 of the EA, such resources would not be affected because the potential changes in fishing patterns and practices of the fleet would take place in areas of the ocean far from shorelines and would not affect the seafloor or benthic habitats since purse seine fishing does not involve contact with the seafloor. 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.

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

Response: No. As stated above, the primary effects of the rule on the U.S. WCPO purse seine fishery are the following: (1) the fishing effort limit on the high seas and in the U.S. EEZ could cause the fleet to fish more in the EEZs of Pacific Island Parties to the Treaty or in the EPO and could cause a reduction in the total fishing effort of the fleet; and (2) the FAD restrictions during July-October would likely transfer some fishing effort from FAD sets to unassociated and from setting on fish that have aggregated in association with a vessel to other unassociated set types, with consequent impacts in terms of species composition of the catch, and possibly shift fishing effort from that time to other periods of the year. Although some transfer of effort is anticipated, none of these effects would be expected to result in the introduction or spread of a nonindigenous species since the vessels in the fleet would not be entering any new geographic areas of operation.

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

Response: No. The purpose of the proposed action is to implement the provisions of CMM 2012-01 for the U.S. WCPO purse seine fleet that are necessary to implement via regulations in 2013 in a timely and

practical manner, in order to contribute to the underlying objectives of CMM 2012-01 regarding WCPO bigeye tuna, yellowfin tuna and skipjack tuna, which are to reduce or maintain their respective fishing mortality rates at levels no greater than the fishing mortality rates associated with maximum sustainable yield. The need for the rule is to satisfy the international 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, pursuant to the authority of the Western and Central Pacific Fisheries Commission Implementation Act. Thus, the rule is limited to an immediate and focused objective and it does not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration.

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

Response: No. As stated in the response to #14, the purpose of the rule is to implement specific conservation and management measures and the need for the rule is to satisfy the international obligations of the United States as a member of the WCPFC. As such, the rule would not be expected to violate any laws or requirements imposed for the protection of the environment.

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

Response: No. See the response to #11 above for a discussion of cumulative effects. The overall cumulative impacts to the WCPO stocks of bigeye tuna, skipjack tuna, and yellowfin tuna are expected to be beneficial, though not substantial.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting EA and RIR prepared for the rule "Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2013 and 2014," 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.

MAY 0 1 2013

Regional Administrator
Pacific Islands Regional Office

Date