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April 26, 2023

MEMORANDUM FOR: The Record

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Acting Regional Administrator

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SUBJECT: Fish Aggregating Device Design Requirements in Purse Seine Fisheries, IMO Number Requirements, and Bycatch Restrictions (RIN 0648-BI79) – National Environmental Policy Act (NEPA) Supplemental Information Report

## Introduction

The National Marine Fisheries Service (NMFS) proposes to establish fish aggregating device (FAD) design requirements, International Maritime Organization (IMO) number requirements, and bycatch restrictions for sharks and rays to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks (HMS) in the Western and Central Pacific Ocean (Convention). The proposed rule was published on October 7, 2021 (86 FR 55790) for public review and comment. NMFS prepared an environmental assessment (EA) to analyze the environmental consequences of implementing the elements of the proposed rule (NMFS 2021). The EA was published for public review and comment along with the proposed rule and no comments were received on the NEPA analysis.

NMFS is preparing this supplemental information report (SIR) to assess the National Environmental Policy Act (NEPA) requirements for the final rule. This SIR documents NMFS' determination that no substantial changes have been made to the proposed action that are relevant to environmental concerns, and that there are no significant new circumstances or information relevant to environmental issues bearing on the proposed action or its impacts that would require supplementation of the EA. NMFS prepared this SIR according to the requirements of NOAA Administrative Order (NAO) Section 216-6A, "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 the associated Companion Manual. NAO 216-6A requires review under NEPA, Council on Environmental Quality (CEQ) regulations<sup>1</sup>, and other related authorities including

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<sup>1</sup>This SIR is being prepared using the 1978 CEQ NEPA Regulations. NEPA reviews initiated prior to the effective date of the 2020 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 (85 FR 43304) and reviews begun after this date are required to apply the 2020 regulations unless there is a clear and fundamental conflict with an applicable statute. This review began on September 9, 2020, and the agency has decided to proceed under the 1978 regulations.



review of environmental consequences on the human environment prior to making a decision. We note that the use of the EA as the basis for our environmental review of the proposed action is appropriate because the current proposed action was considered under the EA.

## **Background**

This final rule would implement specific provisions of four recent decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC) (CMM 2018-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean”; CMM 2018-06, “Conservation and Management Measure for WCPFC Record of Fishing Vessels and Authorization to Fish”; CMM 2019-04, “Conservation and Management Measure for Sharks”; and CMM 2019-05, “Conservation and Management Measure on Mobulid Rays”).

This final rule would be issued under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act; 16 U.S.C. 6901 *et seq.*, which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS.

## **Proposed Action**

### *Non-entangling FAD Requirements*

The final rule would implement specific FAD design requirements set forth in paragraph 19 of CMM 2018-01<sup>2</sup>. Under the final rule, if the FAD design includes a raft (*e.g. flat* raft or rolls of material) and if mesh netting is used as part of the structure, the mesh netting shall have a stretched mesh size less than 7 centimeters (cm) and the mesh net must be tightly wrapped such that no netting hangs below the FAD when deployed. Additionally, any netting used in the subsurface structure of the FAD must be tightly tied into bundles (“sausages”) or have a stretched mesh size less than 7 cm in a panel that is weighted on the lower end with at least enough weight to keep the netting taut in the water column. This element of the rule applies to FADs that have not yet been deployed and not to FADs that are already in the water. This

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<sup>2</sup> In 2021, the Commission adopted CMM 2021-01, which revised the non-entangling FAD requirements to prohibit the use of mesh net. The new requirements will go into effect on January 1, 2024. NMFS plans to implement these new requirements in a separate rulemaking.

element applies to all purse seine vessels used for commercial fishing for highly migratory species (HMS) on the high seas and in exclusive economic zones in the area of application of the Convention (Convention Area), excluding the area of overlap with the Inter-American Tropical Tuna Commission (overlap area).

#### *IMO Number Requirement*

Existing regulations at 50 CFR 300.217(c) apply to all U.S. fishing vessels (including those participating in the fisheries of the U.S. Participating Territories) that are used for commercial fishing for highly migratory fish stocks in the Convention Area either on the high seas or in waters under the jurisdiction of a foreign nation, and the gross tonnage of which is at least 100 gross tons (GT). The owner of any such fishing vessel is required to ensure that an “IMO number” has been issued for the vessel. The existing regulations include a process for fishing vessel owners to request an exemption from NMFS if they are unable to obtain IMO numbers. When NMFS receives such a request it will review it and assist the fishing vessel owner as appropriate. If NMFS determines that it is infeasible or impractical for the fishing vessel owner to comply with the requirement, NMFS will issue an exemption from the requirement for a specific or indefinite amount of time. The exemption will become void if ownership of the fishing vessel changes. Under the final rule, the existing regulations would be revised to include vessels less than 100 GT down to a size of 12 meters in overall length. This element applies to vessels used for commercial fishing for HMS in the Convention Area, including the overlap area, either on the high seas or in waters under the jurisdiction of a foreign nation.

#### *Revised Purse Seine Restrictions for Oceanic Whitetip Shark and Silky Shark and Additional Shark Release Requirement for All Vessels*

The final rule would also implement two specific provisions of CMM 2019-04: (1) an exemption from existing no-retention requirements for purse seine vessels in specific cases where an oceanic whitetip shark or silky shark is not seen during fishing operations and are delivered into the vessel hold; and (2) a requirement for vessels to haul any incidentally caught sharks alongside the vessel before being cut free in order to facilitate species identification. Existing regulations under 50 CFR 300.226 prohibit the crew, operator, and owner on all vessels used for commercial fishing for HMS in the Convention Area from retaining on board, transshipping, storing, or landing any part or whole carcass of an oceanic whitetip shark or silky shark that is caught in the Convention Area, unless collected by an on-board observer. The final rule would establish an exemption for purse seine fishing vessels in the case of any silky shark or oceanic whitetip shark that is not seen during the fishing operation and is unknowingly delivered into the vessel hold and frozen. In such a case, oceanic whitetip shark and silky shark could be stored and landed, but the vessel owner or operator would be required to notify the observer and surrender the whole shark to the responsible government authorities or discard the shark at the first point of landing or transshipment. In U.S. ports the responsible government authority is the NOAA Office of Law Enforcement divisional office nearest to the port. Under the final rule, it would be prohibited to sell or barter oceanic whitetip shark and silky shark surrendered in this manner, but they could be donated for purposes of human consumption, consistent with any applicable laws and policies.

The final rule would also establish a requirement that any shark be hauled alongside the vessel before being cut free (if on a line or entangled in a net) in order to facilitate species identification by the observer on board. This element only applies to vessels on which a WCPFC observer or camera monitoring device are present on board.

Both of these elements apply to all U.S. vessels used for commercial fishing for HMS on the high seas and in exclusive economic zones in the Convention Area (excluding the overlap area).

### *Fishing Restrictions for Mobulid Rays*

This final rule would also implement specific requirements of the provisions of CMM 2019-05 for mobulid rays, including the following five elements:

- 1) Owners and operators are prohibited from setting on a mobulid ray if the animal is sighted prior to a set;
- 2) Owners and operators are prohibited from retaining on board, transshipping, storing, or landing any part or whole carcass of a mobulid ray;
- 3) Owners and operators are required to release any mobulid ray unharmed, as soon as possible, in a manner that results in the least possible harm to the individuals captured, taking into consideration the safety of the crew;
- 4) Owners and operators would be required to allow observers to collect biological samples of mobulid rays, if requested to do so by a WCPFC observer; and
- 5) An exemption for purse seine vessels from elements 2 and 3 in specific cases where a mobulid ray is not seen during fishing operations and is unknowingly delivered into the vessel hold. In such cases, a vessel owner or operator will be required to notify the observer on board, and surrender the whole mobulid ray at the first point of landing, to the responsible government authorities, or other competent authority, or discard it. It is prohibited to sell or barter mobulid rays surrendered in this manner, but they could be donated for purposes of human consumption, consistent with any applicable laws and policies.

The five mobulid ray elements of the final rule would apply to U.S. vessels used for commercial fishing for HMS on the high seas and EEZs in the Convention Area (excluding the overlap area).

### **Purpose and Need**

The purpose and need are the same as described in Section 1.3 of the 2021 EA, and are incorporated herein by reference.

### **Scope**

This SIR documents whether there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts that require supplementation of existing NEPA analyses. The remainder of this document is organized into the following sections: (1) the criteria for supplementing NEPA analyses; (2) summary of existing NEPA documents; (3) evaluation of this proposed action; (4) evaluation of new

information available since preparation of the existing NEPA analyses; (5) public involvement and interagency review; and (6) conclusions.

### **Criteria for Supplementing NEPA Analysis**

The CEQ's Regulations for Implementing the Procedural Provisions of NEPA specify that agencies shall prepare supplements to NEPA documents if (1) the agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (see 40 CFR 1502.9(c)(1)). SIRs are concise documents that contain the rationale for determining whether new information, changed circumstances, or changes to the action are significant such that supplementation is required. NMFS prepares SIRs on a case-by-case basis in order to document whether further NEPA analysis is necessary. Since completing the EA in 2021, NMFS has published new information relevant to the proposed action. This SIR reviews new information and circumstances to determine whether or not the agency must supplement the 2021 EA. As described below, this "new information" is not significant new information relevant to environmental concerns and bearing on the proposed action or its impacts.

### **Summary of Existing NEPA Documents**

The analyses in the 2021 EA includes analyses of the proposed rule. The 2021 EA analyzed a No-Action Alternative and an Action Alternative (in section 2.2 in the 2021 EA). The No-Action Alternative in the 2021 EA would cause no changes to "the status quo" and would result in conditions that are treated as the baseline for the purposes of assessing the impacts of the Action Alternative. Under the No-Action Alternative, the U.S. fleets commercially fishing for HMS in the western and central Pacific Ocean (WCPO) would continue to be managed under existing laws and regulations (described in section 3.2 in the 2021 EA) but none of the elements of the proposed action would be implemented. Under the No-Action Alternative, the United States would not be fulfilling its obligations as a Contracting Party to the Convention. The Action Alternative in the 2021 EA would implement the nine elements of the proposed action (described in section 2.1 in the 2021 EA and in the proposed action section above).

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; U.S. albacore troll fisheries; and the tropical troll, hand line, and pole and line fisheries (Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI)). Table 14 of the EA summarizes which elements of the proposed action would affect each of these fisheries and is provided below. A summary of the effects on each fishery from the relevant elements of the proposed action as detailed in Section 4.1 of the EA follows.

<i>EA Table 14 Summary</i>	<b>Purse Seine</b>	<b>Longline</b>	<b>Albacore Troll</b>	<b>Tropical Troll, Handline and Pole and Line</b>
<b>Non-Entangling FAD Design Requirements</b>	X			
<b>IMO Number Requirements</b>		X	X	X
<b>Shark exemption in purse seine vessels</b>	X			
<b>Shark identification requirements</b>	X	X		
<b>Prohibition from targeting/setting on mobulid rays</b>	X	X	X	X
<b>Prohibition from retaining/transshipping/landing mobulid rays</b>	X	X	X	X
<b>Release mobulid rays alive and unharmed</b>	X	X	X	X
<b>Assist WCPFC observers in collection of information on mobulid rays</b>	X	X		

<b>Mobulid exemption in purse seine fisheries</b>	X			
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*Purse seine fishery*

The non-entangling FAD design requirements could have an effect on fishing patterns and practices of purse seine vessels in certain cases. If specific non-entangling FAD materials were unavailable for some reason (e.g. netting with 7cm mesh size), or if the cost of obtaining specific materials were too high, vessels may choose to forego the opportunity to fish on FADs and fish on unassociated schools of fish instead. In such cases, it could lead to an increase in fuel usage due to increased search time. If vessels chose to fish on unassociated schools instead of FADs, they could also see some change in the composition of their catch with an increase in the proportion of yellowfin tuna and a decrease in the proportion of bigeye tuna, skipjack tuna, and other species that tend to be caught around floating objects. It is unknown exactly how many FADs used by the purse seine fleet would need to be redesigned to meet these requirements. NMFS has implemented similar regulations for requirements adopted by the Inter-American Tropical Tuna Commission (IATTC) (see 83 FR 15503, published April 11, 2018; 83 FR 62732, published December 6, 2018), which became effective on January 1, 2019. Most of the purse seine vessels registered on the WCPFC Record of Fishing Vessels (RFV) are also registered to fish on the IATTC RFV, so it is expected that those vessels would already be responsible for implementing the design requirements included in the proposed action. NMFS anticipated costs associated with the transition in FAD design in the eastern Pacific Ocean, which would vary depending on the materials available to the vessel and which materials the vessel uses, but the measures were not expected to reduce the profitability of the fishery. Similarly, NMFS does not expect the proposed action to reduce profitability of the fishery. In addition, all U.S. purse seine vessels currently on the WCPFC RFV are also on the International Seafood Sustainability Foundation (ISSF) ProActive Vessel Register (PVR), and are required to maintain compliance with ISSF-adopted conservation measures, which include the use of non-entangling FADs or lower entanglement risk FADs. The ISSF lower entanglement risk FADs meet the same design specifications and material requirements that would be included in this element of the proposed action. Therefore, this element is not expected to substantially affect the fishing practices of the purse seine fleet.

Current regulations at 50 CFR 300.226 prohibit the retention, transshipment, storage, or landing of oceanic whitetip shark and silky shark, and require the release of oceanic whitetip shark and silky shark as soon as possible after the shark is caught and brought alongside the vessel. The proposed action would provide an exemption to purse seine vessels in the case where an oceanic whitetip shark or silky shark is not seen during fishing operations and is delivered into the vessel hold and frozen as part of a purse seine operation. This element is meant to provide relief from existing oceanic whitetip shark and silky shark prohibitions in cases where a shark is not seen during fishing operations. In cases where a shark is unintentionally frozen and landed, vessel operators would be required to notify the observer and surrender the whole shark to the

responsible government authorities or discard the shark at the first point of landing or transshipment. If a vessel were to surrender the shark to responsible authorities, it may result in increased time in port and could potentially result in slightly reduced fishing time. However, this is only expected to occur very rarely, and each event is not expected to substantially affect fishing time, so it is not expected to result in any substantial change to fishing practices or patterns in the purse seine fishery.

The proposed action would require that any incidentally caught shark be hauled alongside the vessel before being released in order to facilitate better species identification by WCPFC observers.

For purse seine vessels, it is expected that in most cases, the fish would be released after it is brailled from the purse seine and brought on deck. In these cases, the labor involved would probably be little different than current practice for discarded sharks. If the vessel operator and crew determined that it is possible to release the fish before it is brought on deck, it may involve greater intervention and time on the part of crew members to ensure that the observer is able to properly identify species. However, it is not expected to lead to any substantial change in fishing practices by purse seine vessels.

U.S. purse seine vessels are not known to target mobulid rays, and there is no history of commercial sale of mobulid rays by U.S. purse seine vessels, although they are caught incidentally. The setting prohibition in the proposed action would foreclose the opportunity for a purse seine vessel to make a set in instances in which a mobulid ray is sighted prior to a set.

It would be difficult to predict the frequency of pre-set mobulid ray-sighting events because such events are not recorded. However, historical mobulid ray interaction rates can provide an upper bound estimate of the frequency of pre-set mobulid ray sighting events in the future. Table 15 of the EA shows the estimated rate of mobulid ray interactions by purse seine vessels in the Convention Area, between 2015 and 2019.

As indicated in Table 15, mobulid ray interactions only occur in approximately 3% of observed purse seine sets on average in the purse seine fishery. In those instances where a mobulid ray is sighted prior to a set, the vessel operator would have to wait and/or move the vessel to find the next opportunity to make a set. This could result in longer wait times between sets or a slight increase in fuel usage, if vessels choose to leave the area. Thus, this element of the action alternative would be expected to lead to only minor changes in fishing practices by purse seine vessels.

The proposed action would prohibit purse seine vessels from retaining on board, transshipping or landing any mobulid ray caught on the high seas or in exclusive economic zones (EEZs) in the Convention Area. Table 16 of the EA indicates the average annual number of mobulid rays caught, retained and discarded in the purse seine fishery between 2015 and 2019. As indicated in Table 16, only 1 percent of mobulid rays that are caught are retained in the purse seine fishery. Thus, this element of the action alternative would not be expected to result in any substantial change to fishing practices or patterns in the purse seine fishery.



The proposed action would require that vessels release mobulid rays as soon as possible, taking steps to ensure the safe release of the animals. The specific methods currently used by U.S. purse seine vessels to release mobulid rays are unknown, but are believed to occur on the deck of the vessel upon brailing. It is expected that in most cases, the animal would be released after it is brailed from the purse seine and brought on deck. In these cases, the labor involved would probably be little different than current practice for discarded rays. If the vessel operator and crew determined that it is possible to release the animal before it is brought on deck, this would likely involve greater intervention and time on the part of crew members, which would be costly to the extent that time could otherwise be put to productive activities. Thus, this element of the proposed action could be expected to lead to minor changes in fishing practices by U.S. purse seine vessels.

The proposed action would also include a limited exemption from the no-retention and release requirements in those cases where the vessel observer requests to collect a sample of a mobulid ray, and only in cases where the mobulid ray is dead at haul-back. It is not possible to project how often observers would request assistance in collecting samples. When it does occur, it is not expected that sample collection would be so disruptive as to substantially delay or otherwise impact fishing operations and thus would not be expected to lead to any direct or indirect effects on the purse seine fishery.

This proposed action would provide a limited exemption from the no-retention and release requirements in the case where a mobulid ray is not seen during fishing operations and is delivered into the vessel hold and frozen as part of a purse seine operation. In cases where a mobulid ray is unintentionally frozen and landed, vessels would be required to notify the observer and surrender the whole animal to the responsible government authorities or discard it at the first point of landing or transshipment. If a vessel were to surrender the mobulid ray to the responsible authorities, it may result in increased time in port and could potentially result in slightly reduced fishing time. However, based on the estimated number of retained mobulid rays included in Table 16 of the EA, it is likely that this would only occur very rarely, so it is not expected to result in any substantial change to fishing practices or patterns in the purse seine fishery.

### *Longline Fisheries*

The change in IMO number requirements may minimally affect reporting and recordkeeping activities of a small number of vessel owners and operators. The requirement to obtain an IMO number would be a one-time requirement; once a number has been issued for a vessel, the vessel would be in compliance for the remainder of its life, regardless of changes in ownership. There would be minimal labor costs associated with completing the online form necessary to obtain an IMO number. Completing and submitting the application form (which can be done online and requires no fees) would take about 30 minutes per applicant, on average. Assuming a value of labor of approximately \$26 per hour and communication costs of about \$1 per application, the (one-time) cost to each affected entity would be about \$14. Therefore it is not expected to substantially affect the fishing patterns and practices of U.S. longline vessels in the WCPO.

Current regulations under 50 CFR 300.226 require that all commercial fishing vessels used for commercial fishing for HMS in the Convention Area release any oceanic shark or silky shark as

soon as possible after the shark is caught and brought alongside the vessel. The proposed rule would specifically require that any incidentally caught shark be hauled alongside the vessel before release in order to facilitate better species identification. Because of existing regulations, it is expected that under current fishing practices, sharks are being released as they are brought to the side of the vessel, such as by cutting the line or removing the hook. For vessels where this is not the current fishing practice, the release requirement could cause minor operational changes if it leads to greater intervention and time on the part of crew members to haul the fish alongside the vessel before release. However, it is not likely that this element of the proposed action would substantially affect the fishing patterns or practices of the fleet or cause substantial operational changes to the fishery.

U.S. longline vessels would also be subject four mobulid ray elements in the proposed rule. U.S. longline vessels are not known to target mobulid rays, so the first mobulid element of the proposed rule would not be expected to have any direct or indirect effects. Mobulid rays are caught incidentally in the Hawaii longline and American Samoa longline fisheries, and they are retained on occasion, so the no-retention requirement could lead to minor effects on operations if vessels are required to discard all incidentally caught animals. Table 17 of the EA indicates the average annual numbers of mobulid rays caught, retained, and discarded in each of the affected longline fisheries between 2015 and 2019.

The specific methods currently used by longline vessels to release mobulid rays are unknown, but it is expected that the animal would be quickly released as it is brought to the side of the vessel, such as by cutting the line or removing the hook. Implementation of the requirements to release mobulid rays as soon as possible and taking reasonable steps to ensure safe release may lead to additional dedication of time by the crew, operators, and owners; however, it is unlikely to substantially affect the fishing patterns or practices of the fleet or cause substantial operational changes to the fishery.

The fourth mobulid element of the proposed rule would be a limited exemption from the no-retention and release requirements in those cases where the vessel observer requests to collect a sample of a mobulid ray, and only in cases where the mobulid ray is dead at haul-back. It is not possible to project how often observers would request assistance in collecting samples. When it does occur, it is not expected that sample collection would be so disruptive as to substantially delay or otherwise impact fishing operations and thus would not be expected to lead to any direct or indirect effects on longline fisheries operating in the WCPO.

#### *Albacore Troll Fisheries*

The change in IMO number requirements may minimally affect reporting and recordkeeping activities of a small number of albacore troll vessel owners and operators. The requirement to obtain an IMO number would be a one-time requirement; once a number has been issued for a vessel, the vessel would be in compliance for the remainder of its life, regardless of changes in ownership. There would be minimal labor costs associated with completing the online form necessary to obtain an IMO number. Completing and submitting the application form (which can be done online and requires no fees) would take about 30 minutes per applicant, on average. Assuming a value of labor of approximately \$26 per hour and communication costs of about \$1 per application, the (one-time) cost to each affected entity would be about \$14. Therefore it is not

expected to substantially affect the fishing pattern and practices U.S. albacore troll vessels in the WCPO. The requirement to haul any incidentally caught shark alongside the vessel, and the requirement to assist WCPFC observers in the collection of mobulid ray samples would only be applicable in cases where an observer is on board, so in the medium term these provisions would not be expected to apply to albacore troll vessels because currently these vessels are not required to carry observers. Thus, neither of these requirements would be expected to lead to any direct or indirect effects on the fisheries.

Based on the best available data, mobulid rays are not caught in albacore troll fleet, so the targeting, non-retention and release requirements would not be expected to lead to any direct or indirect effects on the fisheries.

#### *Tropical troll, hand line, and pole and line fisheries*

The change in IMO number requirements may minimally affect reporting and recordkeeping activities of a small number of tropical troll vessel owners and operators. The requirement to obtain an IMO number would be a one-time requirement; once a number has been issued for a vessel, the vessel would be in compliance for the remainder of its life, regardless of changes in ownership. There would be minimal labor costs associated with completing the online form necessary to obtain an IMO number. Completing and submitting the application form (which can be done online and requires no fees) would take about 30 minutes per applicant, on average. Assuming a value of labor of approximately \$26 per hour and communication costs of about \$1 per application, the (one-time) cost to each affected entity would be about \$14. Therefore it is not expected to substantially affect the fishing patterns and practices of tropical troll vessels in the WCPO. The requirement to haul any incidentally caught shark alongside the vessel, and the requirement to assist WCPFC observers in the collection of mobulid ray samples would only be applicable in cases where an observer is on board, so in the medium term these provisions would not be expected to apply to U.S. tropical troll, hand line or pole and line vessels because currently these vessels are not required to carry observers. Thus, neither of the requirements would be expected to lead to any direct or indirect effects on the fisheries.

Based on the best available data, mobulid rays are not caught in the tropical troll fleet, so the targeting, non-retention and release requirements would not be expected to lead to any direct or indirect effects on the fishery. The Hawaii hand line and pole and line fisheries are not known to target mobulid rays, however, they have been caught incidentally on rare occasions. Fewer than 10 interactions were reported between 2011 and 2015, and there have been zero interactions reported since 2015 (NMFS unpublished data). Therefore, the non-retention and release requirements would not be expected to impact fishing operations in the Hawaii hand line or pole and line fisheries.

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

The EA also concluded that because many other factors contribute to the status of the stocks (fishing activities by non-U.S. fleets, oceanographic conditions, etc.), the direct and indirect effects to target and non-target stocks from implementation of any of the action alternatives would not be expected to be substantial. The analyses also concluded that none of the action

alternatives would cause substantial effects to other resources, biodiversity, and ecosystem functions in the affected environment.

### **Evaluation of the Proposed Action**

The final rule would include one change to the regulatory text from the proposed rule. NMFS has revised the regulation text for FAD requirements to clarify that the FAD design requirements will only apply to FADs deployed from a vessel. This change would not affect the analysis of the FAD design requirements in the EA, since the change is a minor clarification to the applicability of the requirements and does not affect the broad qualitative analysis of the new requirements included in the EA or the EA's conclusions.

### **Evaluation of New Information Since Preparation of the Existing NEPA Analyses**

The following is new information available since publication of the 2021 EA:

1. NMFS published a final rule to prohibit the use of wire leaders in the Hawaiian deep-set longline fishery and to require the removal of fishing gear from any oceanic whitetip shark caught in all of the regional domestic longline fisheries (87 FR 25153; April 28, 2022).

Section 5.2.4 of the 2021 EA summarized the cumulative impacts to protected resources, including the oceanic whitetip shark with the finalized rule's prohibited use of wire leaders.

The 2021 EA stated that in June of 2021, the Western Pacific Fishery Management Council (the Council) recommended a number of regulatory actions for the Hawaii deep-set longline fishery, including a prohibition on the use of wire leaders and a requirement to remove trailing gear from oceanic whitetip sharks.<sup>3</sup> The 2021 EA stated that should NMFS take action on the Council recommendation, it is likely that action would result in additional reduced adverse impacts for sharks. Thus, the 2021 EA considered the potential environmental effects of the prohibition on the use of wire leaders in the Hawaiian deep-set longline fishery and the requirement to removal fishing gear from any oceanic whitetip shark caught in all of the regional domestic longline fisheries, even though the action was not yet final.

2. NMFS published a biological opinion for the continued operation of the U.S. WCPO purse seine fishery for Endangered Species Act (ESA)-listed species under NMFS jurisdiction on September 15, 2021 (2021 BiOp). This opinion concluded that the fishery is not likely to jeopardize the continued existence of the following species: endangered sei whales, endangered fin whales, endangered sperm whales, endangered leatherback sea turtles, endangered South Pacific loggerhead sea turtles, threatened Eastern Pacific green sea turtles, threatened East Indian-West Pacific green sea turtles, threatened Southwest Pacific green sea turtles, endangered Central West Pacific green sea turtles, endangered

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<sup>3</sup> Action Memorandum from the 186<sup>th</sup> Council Meeting, June 21-24, 2021: <https://www.wpcouncil.org/wp-content/uploads/2021/02/FINAL-186th-CM-Action-Memorandum.pdf>

Central South Pacific green sea turtles, threatened olive ridley sea turtles and olive ridley sea turtles from the endangered Mexico breeding population, threatened oceanic whitetip sharks, threatened Indo-West Pacific scalloped hammerhead sharks, and threatened giant manta ray. The biological opinion sets forth specific reasonable and prudent measures (RPMs), as well as specific terms and conditions (T&Cs) for implementing those reasonable and prudent measures, to minimize impacts from the fishery on listed species. NMFS is considering appropriate methods for implementing those RPMs and T&Cs. Those RPMs and T&Cs do not require NMFS to take immediate action. However, NMFS's implementation of those RPMs and T&Cs could lead to some new requirements on the fleet.

The biological opinion also concluded that the following threatened and endangered species are not likely to be adversely affected by the United States WCPO purse seine fishery: 15 species of corals (*A. globiceps*, *A. jacquelineae*, *A. lokani*, *A. pharaonis*, *A. retusa*, *A. rudis*, *A. speciosa*, *A. tenella*, *A. spinose*, *E. paradivisa*, *I. crateriformis*, *M. australiensis*, *P. diffluens*, *P. napopora*, *Seriatopora aculeate*), chambered nautilus, blue whales, Western North Pacific humpback whales, Central America humpback whales, Mexico humpback whales, North Pacific loggerhead sea turtles, Southeast Indo-Pacific loggerhead sea turtle, Central North Pacific green sea turtles, Eastern Pacific scalloped hammerhead sharks, and Guadalupe fur seals.

Sections 3.4.1 and 4.5 of the 2021 EA list the listed species that are described in the 2021 BiOp, along with additional listed species of interest.

The Action Alternative is a conservation action in that it has the potential to reduce – or prevent further increases – in fishing mortality rates and therefore reduce adverse impacts for a number of ESA-listed species that interact with U.S. fisheries in the Convention Area, including mobulid rays, sea turtles, and sharks. This could result in the species' abundances in the WCPO being greater than they would under the No-Action Alternative. Implementation of the non-entangling FAD requirements included in the Action Alternative could be expected to reduce the risk of entanglements for ESA-listed species of sharks and turtles. Sea turtles and sharks are known to associate with FADs; however, very little data exists on the number of animals which may become entangled in unobserved, drifting FADs or how many may become entangled underneath observed FADs. Therefore, NMFS is unable to quantify the degree of reduction in entanglements that could result from the proposed action. Implementation of the targeting and setting prohibition and no-retention and release requirements for mobulid rays are intended to reduce the adverse impacts of fisheries on mobulid rays, including ESA-listed giant manta rays. If mobulid rays were released before being brought on deck, it may further reduce adverse impacts and improve survivability; however, to date, very little is known about the post-release survival rates of giant manta and other species of mobulid rays. Therefore, NMFS is unable to quantify the potential increase in survivability that may result from the proposed action. The requirement to haul any incidentally caught shark alongside the vessel in order to improve species identification, could also be reasonably expected to reduce adverse impacts to sharks. To the effect that vessels will be hauling sharks closer to the vessel before cutting them free, it could be expected that they would cut the line closer to the hook and in turn reduce the amount of trailing gear left on the sharks when they are cut free, which has been proven to improve post-release survival rates in sharks (Hutchinson et al. 2021). In the event that the IMO number requirements could lead to

reduced likelihood of IUU fishing activities in the Convention Area, this could bring conservation benefits for ESA-listed species and could contribute to species' abundances in the WCPO being greater than they would under the No-Action Alternative. Other elements of the Action Alternative, including the shark and ray exemption for purse seine vessels, could be expected to have neutral if any impacts to ESA-listed species.

NMFS completed the 2021 EA and published the biological opinion in September 2021. The information in the biological opinion is substantially similar to the information on ESA-listed species and analysis of impacts included in the 2021 EA. NMFS is considering appropriate methods for implementing the RPMs and T&Cs included in the biological opinion which do not require NMFS to take immediate action, but NMFS's implementation of those RPMs and T&Cs could lead to some new requirements on the fleet. NMFS would conduct any additional NEPA analysis necessary for implementation of those RPMs and T&Cs when appropriate.

Chapter 5 of the EA presented the analysis of cumulative impacts, including analysis of future actions by the United States for domestic management of the fisheries that operate in the Pacific Ocean, the specific details of which were unknown at that time. The 2021 EA accounted for variability in interaction rates with protected species, dependent on multiple factors, as well as for changes to domestic management of the fisheries in the cumulative impacts analysis.

3. NMFS published a supplemental biological opinion on the effects to oceanic whitetip sharks and giant manta rays from the Hawaii deep-set longline fishery on September 28, 2022. This opinion concluded that the Hawaii deep-set longline fishery is not likely to jeopardize the continued existence of the threatened giant manta ray or threatened oceanic whitetip shark. The biological opinion sets forth RPMs, as well as specific T&Cs for implementing those reasonable and prudent measures, to minimize impacts from the fishery on the two listed species.

Section 3.4.1 and Section 4.5 of the 2021 EA gives a summary of the ongoing ESA Section 7 consultation for the Hawaii deep-set longline fishery along with additional listed species of interest, and details the effects of implementation of the Action Alternative on listed species, as described in item #2 above. Chapter 5 of the EA presented the analysis of cumulative impacts, including analysis of future actions by the United States for domestic management of the fisheries that operate in the Pacific Ocean, the specific details of which were unknown at that time. The 2021 EA accounted for variability in interaction rates with protected species, dependent on multiple factors, as well as for changes to domestic management of the fisheries in the cumulative impacts analysis.

4. NMFS published a supplemental biological opinion on the effects to oceanic whitetip sharks and giant manta rays from the American Samoa longline fishery on October 27, 2022. This opinion concluded that the American Samoa longline fishery is not likely to jeopardize the continued existence of the threatened giant manta ray or threatened oceanic whitetip shark. The biological opinion sets forth RPMs, as well as specific T&Cs for implementing those reasonable and prudent measures, to minimize impacts from the fishery on the two listed species.

Section 3.4.1 and Section 4.5 of the 2021 EA gives a summary of the ongoing ESA Section 7 consultation for the American Samoa longline fishery along with additional listed species of interest, and details the effects of implementation of the Action Alternative on listed species, as described in item #2 above. Chapter 5 of the EA presented the analysis of cumulative impacts, including analysis of future actions by the United States for domestic management of the fisheries that operate in the Pacific Ocean, the specific details of which were unknown at that time. The 2021 EA accounted for variability in interaction rates with protected species, dependent on multiple factors, as well as for changes to domestic management of the fisheries in the cumulative impacts analysis.

## **Public Involvement and Interagency Review**

The underlying action has already been evaluated in the 2021 EA and subject to public comment. The 2021 EA was published with the required public comment opportunity and members of the public and representatives of other federal, state, and territorial agencies had the opportunity to comment.

## **Conclusions**

NMFS concludes that the existing NEPA analyses adequately address the impacts of the proposed action on the human environment and that no additional NEPA analysis is required to implement the proposed action. NMFS has thoroughly reviewed the current proposed action, has compared the current proposed action with the scope of actions analyzed in the 2021 EA and has concluded the following:

1. The potential impacts from the proposed action on the human environment were fully analyzed in the 2021 EA;
2. The resources potentially affected by the proposed action were adequately described and evaluated in the 2021 EA and
3. At this time, there is no new significant information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts that were not taken into consideration in the 2021 EA.

## **Decision**

Based on the above discussion, I conclude that the existing NEPA analysis adequately assesses the impacts of the proposed action on the human environment and that supplemental NEPA analysis is not required. Because the proposed action is a continuation of a management regime, there is no large change to the fishery or the environmental effects analysis, and there are no significant new circumstances or new information that raise environmental concerns or have bearing on the proposed action or its impacts as analyzed in the EA, I have determined the analysis in the EA remain valid and supplementation is not necessary. Members of the public and other agencies have received sufficient notice and opportunity to comment.

NMFS will maintain the signed memorandum in the record for the proposed action.

## **References**

NMFS (National Oceanic and Atmospheric Administration). 2021. Environmental Assessment for a Rule to Implement Decisions of the Western and Central Pacific Fisheries Commission for Fish Aggregating Device Design Requirements in Purse Seine Fisheries, IMO Number Requirements, and Bycatch Restrictions. September 2021. Honolulu: National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Pacific Islands Regional Office.