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Finding of No Significant Impact

Fish Aggregating Device Design Requirements in Purse Seine Fisheries, International Maritime Organization (IMO) Number Requirements, and Bycatch Restrictions – RIN 0648-BI79

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

- National Oceanic and Atmospheric Administration's (NOAA) Administrative Order (NAO) 216-6A (April 22, 2016) – Compliance with the National Environmental Policy Act, Executive Orders 12114 (Environmental Effects Abroad of Major Federal Actions), 11988 and 13690 (Floodplain Management), and 11990 (Protection of Wetlands); and its associated Companion Manual (January 13, 2017); and
- Council on Environmental Quality (CEQ) significance criteria.[1]

Background

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

The rulemaking would establish fish aggregating device (FAD) design requirements, International Maritime Organization (IMO) number requirements, and bycatch restrictions for sharks and rays. The rule would implement specific decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). These decisions include CMM 2018-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna"; CMM 2018-06, "Conservation and Management Measure for WCPFC Record of Fishing Vessels and Authorisation to Fish"; CMM 2019-04, "Conservation and Management Measure for Sharks"; and CMM 2019-05, "Conservation and Management Measure on Mobulid Rays."

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

The specific elements of the rule are detailed below.

1. Non-entangling FAD Requirements

This rule would implements specific FAD design requirements set forth in paragraph 19 of CMM 2018-01.[2] 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 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 element of the rule 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 Commission's area of competence (Convention Area) (excluding the area of overlapping jurisdiction with the Inter-American Tropical Tuna Commission (overlap area)).

2. 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 GRT or 100 GT (gross tons). 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 this rule, the existing regulations would be revised to include vessels less than 100 GRT down to a size of 12 meters in overall length (LOA). This element of the rule would apply 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.

3. Revised Purse Seine Restrictions for Oceanic Whitetip Shark and Silky Shark and Additional Shark Release Requirement for All Vessels

This rule also would implements 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

[2] 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 go into effect on January 1, 2024. NMFS plans to implement these new requirements in a separate rulemaking.

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. This 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 this 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 rule also would 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 of the rule would only applies to vessels on which a WCPFC observer or camera monitoring device are present on board, and to sharks that are brought alongside the vessel. This element of the rule would not apply to sharks that are brought on board the vessel.

Both of these elements of the rule would 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).

4. Fishing Restrictions for Mobulid Rays

This rule also would 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 are 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 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).

NMFS prepared an environmental assessment (EA) to analyze the potential effects of the proposed action. The EA included analysis of one action alternative that would implement all of the elements of the rule, as described above, as well as analysis of the no-action alternative. The following significance analysis is based on the information in the EA. The EA was published for public review and comment along with the proposed rule on October 7, 2021, and no comments were received on the NEPA analysis.

Significance Analysis

The 1978 Council on Environmental Quality (CEQ) Regulations state that the determination of significance using an analysis of effects requires examination of both context and intensity, and lists ten criteria for intensity (40 CFR 1508.27). In addition, the Companion Manual for National Oceanic and Atmospheric Administration Administrative Order 216-6A provides sixteen criteria, the same ten as the CEQ Regulations and six additional, for determining whether the impacts of a proposed action are significant. We discuss each criterion below with respect to the proposed action, and consider each one both individually and in combination with the other criteria.

1. Can the proposed action reasonably be expected to cause both beneficial and adverse impacts that overall may result in a significant effect, even if the effect will be beneficial?

Response: No. The proposed action would affect the following fisheries in the western and central Pacific Ocean (WCPO): the U.S. WCPO purse seine fishery; the Hawaii-based longline fisheries; the American Samoa-based longline fishery; 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.

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

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 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 the WCPO. 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, NMFS expects that this requirement would not be frequently applicable. Although an observer would be present on 100 percent of trips, in most cases, the fish would be released only after it is brailed from the purse seine and brought on deck. NMFS notes that observers on purse seine vessels already routinely identify sharks that are brailed and brought on board the vessel. In the infrequent circumstance that the vessel operator and crew determined that it is possible to release the fish before it is brought on deck, greater intervention and time on the part of crew members would be needed to ensure that the observer is able to properly identify species. To the extent that time could otherwise be put to productive activities, this could lead to increased costs associated with labor.

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 and there are approximately 5,652 observed sets annually (using data from 2015-2019). 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 likely that 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. This requirement would only apply to sharks that are brought alongside the vessel and not to sharks that are brought on board. 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 infrequently 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. However, these requirements would apply in the unlikely event of mobulid ray bycatch occurring in the fishery.

Tropical troll, handline, 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, handline 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. However, these requirements would apply in the unlikely event of mobulid ray bycatch occurring in the fishery. The Hawaii handline 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 handline 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.

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

Response: No. The FAD design requirements and IMO number requirements would not be expected to have any effects on public health and safety. The FAD design requirements would involve specific design elements for FADs and the IMO number requirements would involve specific administrative tasks, so no public health and safety effects would be expected. The shark and mobulid ray requirements include specific handling and release requirements that could have some effects on the health and safety of crew if not done carefully. However, as explicitly stated in Section 2.1 of the EA, the requirements for mobulid rays would require consideration of the safety of the crew. Existing requirements for shark release at 50 CFR 300.226 include language requiring consideration of the safety of any persons and that language would continue to apply and also be included in the proposed action's new requirements for shark and mobulid ray handling and release. The environmental effects of the existing requirements were analyzed in an EA, available at regulations.gov by searching for NOAA-NMFS-2014-0086.

3. Can the proposed action reasonably be expected to result in significant impacts to unique characteristics of the geographic area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas?

Response: No. The affected fisheries generally do not affect unique characteristics of the geographic area including historic or cultural resources, park lands, prime farmlands, wetlands,

wild and scenic rivers or ecologically critical areas. Effects on essential fish habitat (EFH) are described under question 13 below. The proposed action would not affect designated EFH.

Effects on critical habitat were considered as part of the analysis of effects on species listed under the Endangered Species Act (ESA), as discussed in Section 3.4.1 and Section 4.5 of the EA and in more detail under question 9 below. The proposed action would not affect designated critical habitat.

There are several National Wildlife Refuges and National Monuments in the affected environment (see Section 3.4.4 of the EA). However, these resources would not be affected because the potential changes in fishing patterns of the fleets would take place in areas of the ocean far from shorelines and would not affect the seafloor or benthic habitats since the fishing activities do not involve contact with the seafloor. In addition, commercial fishing is already prohibited in the National Monuments, pursuant to the 2009 and 2014 Presidential Proclamations. See Section 4.5 of the EA.

Shipwrecks would be the only known cultural objects potentially within the affected environment. The location of most shipwrecks is unknown. However, as described in Section 4.5 of the EA, the fishing operations in the affected fisheries do not come into contact with the seafloor, so the operations of the affected vessels would not be expected to affect any material from shipwrecks, which typically rests on ocean bottoms.

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

Response: No. As described in the response to Question 1 above, no substantial changes to fishing operations are expected in any of the affected fisheries. Thus, it is unlikely that there would be any controversy regarding the size, nature, or effects of the action (i.e., the effects of the action on the quality of the human environment). NMFS received two public comments on the proposed rule, including from members of the regulated community, which were generally supportive of the proposed action.

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

Response: No. As described throughout the 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. As described in the response to Question 1, above, no substantial changes to fishing operations are expected in any of the affected fisheries. Therefore, the effects from the proposed action are not likely to be highly uncertain. Thus, the effects on the human environment from the proposed action would not be highly uncertain or involve unique or unknown risks.

6. Can the proposed action reasonably be expected to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

Response: No. As stated in Section 1.3 of the EA, the purpose of the proposed action is to implement certain provisions of CMMs 2018-01, 2018-06, 2019-04 and 2019-05, regarding non-entangling FADs, IMO numbers, sharks, and mobulid rays, for U.S. fishing vessels fishing for HMS in the Convention Area. The need for the proposed rule is to satisfy the obligations of the United States as a Contracting Party to the Convention, pursuant to the authority of the WCPFC Implementation Act. Thus, the proposed action is limited to an immediate and focused objective and it does not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration.

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

Response: No. The cumulative impacts on the resources in the affected environment that could be impacted by the proposed action would likely be a reduction of adverse effects on resources from a reduction in fishing effort in comparison to operation of the fisheries absent the management measures that are being or would be implemented under the identified actions. The proposed action as well as other identified actions would be conservation and management measures for sustainable management of these resources (see Chapter 5 of the EA). Based on all information to date, the proposed action would not be expected to lead to substantial cumulative impacts. No significant cumulative impacts on the human environment, including protected resources, are anticipated from implementation of the proposed action.

8. Can the proposed action reasonably be expected to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources?

Response: No. As stated in Section 4.5 EA, shipwrecks would be the only known cultural objects potentially within the affected environment. The location of most shipwrecks is unknown. However, the fishing operations do not come into contact with the seafloor, so the operations of the affected fleets would not be expected to affect any material from shipwrecks, embedded in the ocean bottom. Thus, there would be no effects to districts, sites, highways, structures or objects listed in or eligible for listing in the National Register of Historic Places or potential loss or destruction of significant scientific, cultural, or historical resources.

9. Can the proposed action reasonably be expected to have a significant impact on endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973?

Response: No. Section 3.4.1 and Section 4.5 of the EA present the analysis of effects to species listed under the Endangered Species Act (ESA) from the proposed action.

The affected fisheries would not be expected to experience substantial changes to fishing patterns and practices from the proposed action, as described in the response to Question 1, above.

The proposed action 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 proposed action could be expected to reduce the risk of entanglements for ESA-listed species of sharks and turtles. 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. 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. Other elements of the proposed action, including the IMO number requirements and the shark and ray exemption for purse seine vessels, could be expected to have neutral if any impacts to ESA-listed species.

Subsequent to completion of the EA, NMFS published a biological opinion for the continued operation of the U.S. WCPO purse seine fishery for 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 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 2021 BiOp 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.

NMFS also 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.

In addition, 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.

The new information published subsequent to publication of the EA does not change the conclusions in the EA.

In summary, the EA evaluated impacts on protected resources, including ESA-listed species, and determined that these impacts are not significant.

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

Response: No. As stated in Section 1.3 of the EA, the purpose of the proposed action is to implement certain provisions of CMMs 2018-01, 2018-06, 2019-04 and 2019-05, regarding non-entangling FADs, IMO numbers, sharks, and mobulid rays, for U.S. fishing vessels fishing for HMS in the Convention Area. The need for the proposed rule is to satisfy the obligations of the United States as a Contracting Party to the Convention, pursuant to the authority of the WCPFC Implementation Act. The proposed action will be consistent with other applicable laws. NMFS developed the EA and coordinated the proposed action and environmental documents with several state and territorial agencies, including the Hawaii, Guam, Commonwealth of Northern Mariana Islands, and American Samoa coastal zone management programs, and with other offices responsible for reviewing action effects, and the public. NMFS provided opportunities for the public to review and comment on the draft EA and on the proposed rule and did not receive any comments indicating that the proposed action has the potential to violate a Federal, State, or local law imposed for environmental protection.

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

Response: No. As stated in the response to Question 1, above, the proposed action would not be expected to lead to substantial changes in the affected fisheries. Thus, implementation of the proposed rule would not be expected to cause any impacts to marine mammals not previously considered by the List of Fisheries (LOF) classification or authorized by the commercial taking exemption under Section 118 of the MMPA.

Section 3.4.2 and Section 4.5 of the EA discuss effects from the proposed action on marine mammals. The EA includes information from the 2021 LOF, which includes classification for each commercial fishery into one of three categories in terms of interactions with marine mammals.

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

The Hawaii deep-set longline fishery is a Category I fishery on the 2021 LOF, meaning that it is a commercial fishery with frequent serious injuries and mortalities of marine mammals.

The Hawaii shallow-set longline fishery is a Category II fishery on the 2021 LOF, meaning that it is a commercial fishery determined to have occasional incidental mortality and serious injury of marine mammals. The Hawaii shallow-set longline fishery is classified as a Category III fishery for MMPA 101(a)(5)(E) purposes, because it has no known interactions with ESA-listed marine mammals, therefore no MMPA section 101(a)(5)(E) permit is required (see 86 FR 24384).

On May 6, 2021, NMFS authorized a permit under the MMPA section 101(a)(5)(E), addressing interactions with ESA-listed species or depleted stocks of marine mammals in the Hawaii deep-set fishery (86 FR 24384). The permit authorizes the incidental, but not intentional, taking of ESA-listed Central North Pacific humpback whales, and MHI insular false killer whales to vessels registered in the Hawaii deep-set fishery. In issuing this permit, NMFS determined that incidental taking by the Hawaii deep-set longline fishery will have a negligible impact on the affected stocks of marine mammals
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The American Samoa longline fishery and the south Pacific albacore troll fishery are Category II fisheries on the 2021 LOF. Both fisheries are classified as a Category III fisheries for MMPA 101(a)(5)(E) purposes, because there are no known interactions with ESA-listed marine mammals, therefore no MMPA section 101(a)(5)(E) permit is required.

The north Pacific albacore troll fishery, tropical troll fisheries (American Samoa, CNMI, Guam and Hawaii) and the Hawaii handline and pole and line fisheries are all Category III fisheries, meaning that there is a remote likelihood of or no known incidental mortality or serious injury of marine mammals.

NMFS publishes the LOF each year, which includes classification for each commercial fishery into one of three categories in terms of interactions with marine mammals. The most recent final LOF was published on April 19, 2022 (87 FR 23122), subsequent to publication of the EA. Aside from renaming the purse seine fishery to the Western and Central Pacific Ocean tuna purse seine fishery, the fisheries that would be affected by the proposed action fall under the same categories as described in the EA.

As evaluated and set forth in the EA, NMFS has determined that the action will not significantly impact marine mammals.

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

Response: No. As stated in the response to Question 1, above, no substantial changes to fishing operations are expected in any of the affected fisheries. As described in Section 4.3 and Section 4.4 of the EA, the regulatory changes under the proposed action would not be expected to substantially affect the fishing behavior of vessels in the U.S. longline fisheries, the albacore troll fishery, or the tropical troll, handline and pole and line fisheries, and thus, effects to target stocks from these fisheries would not be expected. There could be minor changes to fishing patterns and practices if vessel owners and operators need additional time at sea during fishing operations to comply with specific mitigation measures regarding sharks and mobulid rays, but these changes would not be expected to affect the target stocks of U.S. vessels in the WCPO. There could be some change to the overall composition of the catch made by U.S. purse seine vessels in the WCPO if vessels choose to forego fishing on FADs because of the non-entangling FAD design requirements in the proposed action. Any shift from using FADs to unassociated sets could lead to a greater proportion of the catch being composed of yellowfin tuna and a reduced proportion of the catch being composed of bigeye tuna. Thus, the overall fishing mortality on bigeye tuna could decrease and the overall fishing mortality on yellowfin tuna could increase. As juvenile tunas are associated with FADs, implementation of the proposed action could reduce fishing mortality on juvenile tunas. However, most purse seine vessels would likely already be using non-entangling FAD materials, so this element of the proposed rule would not be expected to substantially affect the fishing patterns or practices of purse seine vessels; thus, significant effects to fish stocks from this fishery under the proposed action would not be expected. Thus, no adverse effects to managed fish species are anticipated from the proposed action.

13. Can the proposed action reasonably be expected to adversely affect essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act?

Response: No. As stated in Section 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 (HAPC) under MSA provisions, or to ocean and coastal habitats. Such resources would not be affected because the potential changes in fishing patterns in the fisheries would take place in areas of the ocean far from shorelines and would not affect the seafloor or benthic habitats since purse seine does not

involve contact with the seafloor. Also, because any effects to fish stocks would not be substantial, as discussed above, any pelagic fish habitat designated as EFH, including the water column, or HAPC, would not be expected to experience any substantial effects – either beneficial or adverse – from implementation of the proposed action, as the small effects on the stocks would be unlikely to lead to any indirect effects to fish habitat (e.g., an increase in predator or prey leading to trophic interactive effects leading to effects on habitat). An adverse effect is any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH (50 CFR 600.810).

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

Response: No. The proposed action would not affect vulnerable marine or coastal ecosystems. As stated in Section 4.5 of the EA, potential changes in fishing patterns and practices in the fisheries would take place in areas of the ocean far from shorelines and would not affect the seafloor or benthic habitats since the fishing activities do not involve contact with the seafloor. Thus, the proposed action would not affect ocean or coastal habitats, including vulnerable marine or coastal ecosystems.

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

Response: No. As described in Section 4.6 of the EA, implementation of the proposed action could have some minor effects on current fishing patterns and practices. However, it is unlikely that any such effects would be large enough to impact the marine ecosystem or affect biodiversity. Overall, the proposed action would not cause substantial effects on biodiversity and ecosystem function.

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

Response: No. As described in Sections 4.2 through 4.7 of the EA, the main effects from the proposed action would not be expected to be substantial.

Although a minor geographical shift of fishing effort is possible in response to the effects described in Section 4.2 through 4.7 of the EA, particularly if there were a shift from using FAD sets to unassociated sets from implementation of the new FAD design requirements, none of these effects would be expected to result in the introduction or spread of a nonindigenous species. The vessels in the fisheries would not be entering any new geographic areas of operation as a result of the proposed action so the introduction or spread of a nonindigenous species to a new area would not be expected.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting EA prepared for the rulemaking titled "Fish Aggregating Device Design Requirements in Purse Seine Fisheries, IMO Number Requirements, and Bycatch Restrictions – RIN 0648-BI79," NOAA has determined that the rulemaking will not significantly impact the quality of the human environment. In determining no significant impacts, all beneficial and adverse impacts of the proposed action have been addressed. Accordingly, it is not necessary to prepare an environmental impact statement for this action.

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2023-04-25

Acting Regional Administrator
Pacific Islands Regional Office

Date