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August 16, 2024

MEMORANDUM FOR: The Record

FROM: Sarah Malloy
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SUBJECT: Changes to Purse Seine Fish Aggregating Device Closure Periods (RIN 0648-BM86) – National Environmental Policy Act (NEPA) Supplemental Information Report – Revised

Introduction

The National Marine Fisheries Service (NMFS) is implementing a recent decision of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission) through a rulemaking. This decision, Conservation and Management Measure (CMM) 2023-01, "Conservation and Management Measure for Bigeye, Yellowfin, and Skipjack Tuna in the Western and Central Pacific Ocean," shortens the duration of fish aggregating device (FAD) closure periods for the U.S. purse seine fishery. This action is necessary to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Species in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

Under current NMFS regulations at 50 CFR 300.223(b)(2), current WCPFC FAD prohibition periods are from July 1 through September 30, in each calendar year, for the high seas and exclusive economic zones (EEZs) in the area of application of the Convention (Convention Area), and from November 1 through December 31, in each calendar year, solely on the high seas in the Convention Area. Thus, U.S. purse seine vessels are currently prohibited from setting on FADs for three months in EEZs and on the high seas in the Convention Area, and for an additional two months on the high seas in the Convention Area.

Paragraph 13 of CMM 2023-01 reduces the three-month FAD prohibition period for the EEZs and on the high seas in the Convention Area to one and a half months, running from July 1 to August 15, per calendar year. This final rule would amend the regulations at 50 CFR 300.223(b)(2)(1) so the three-month FAD prohibition period for the EEZs and on the high seas would be revised to cover only from July 1 through August 15, in each calendar year, consistent with CMM 2023-01.

Paragraph 14 of CMM 2023-01 reduces the additional two-month high seas FAD prohibition period to one month – either April, May, November, or December. Previously, WCPFC members

could choose between implementing the two-month additional FAD prohibition period on the high seas in April and May or in November and December. NMFS has previously determined that implementing the two-month additional FAD prohibition period in November and December would be more cost-effective for the fleet than implementing the prohibition period in April and May (NMFS 2018). Regulations at 50 CFR 300.223(b)(2)(2) implement the additional two-month high seas FAD prohibition period in November and December. NMFS believes that implementing the one month high seas FAD prohibition period late in the year likely would continue to be more cost-effective for the fleet. Thus, the additional one-month high seas FAD prohibition period would be implemented in December 2024 and in future calendar years.

This rulemaking is part of an ongoing management action NMFS described in a programmatic environmental assessment (PEA) prepared in 2015 (NMFS 2015) and a supplemental environmental assessment (SEA) prepared in 2021 (NMFS 2021a). The PEA and SEA analyzed NMFS' domestic implementation of the conservation and management measures on tropical tunas in the western and central Pacific Ocean (WCPO), adopted by the Commission, pursuant to the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA; 16 USC 6901 et seq.). The SEA evaluated the impacts of management from 2021 through 2025. This supplemental information report (SIR) documents NMFS' determination that we have not made substantial changes 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 PEA or SEA. 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 the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations[1], and other related authorities including review of environmental consequences on the human environment prior to making a decision. We note that the use of the PEA and SEA as the basis for our environmental review of the proposed action is appropriate because the current proposed action falls within the range of alternatives analyzed in the PEA and SEA.

Background

At its Fourteenth Regular Session, in December 2017, the Commission adopted Conservation and Management Measure (CMM) 2017-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean." CMM 2017-01 included provisions for purse seine fishing effort limits, restrictions on the use of FADs for purse seine fishing vessels, specific catch retention provisions for purse seine fishing vessels, and longline bigeye tuna catch limits, among others. At its Fifteenth Regular Session, in December 2018, the Commission adopted Conservation and Management Measure (CMM) 2018-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean," which replaced CMM 2017-01 but included similar

[1] This SIR applies the CEQ's 2020 NEPA Regulations, as modified by the Phase 1 revisions because review of the proposed action began on April 22, 2024, which preceded the effective date of CEQ's Phase 2 NEPA regulations (July 1, 2024).

provisions. CMM 2018-01 went into effect on February 13, 2019, and remained in effect until February 10, 2021. At its Seventeenth Regular Session, in December 2020, the Commission adopted CMM 2020-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean," which is identical to 2018-01, and was in effect until February 15, 2022. At its Eighteenth Regular Session, in December 2021, the Commission adopted CMM 2021-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean," which was in effect until February 15, 2024. At its Twentieth Regular Session, in December 2023, the Commission adopted CMM 2023-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean," which is in effect until February 15, 2027. This CMM is available at: https://cmm.wcpfc.int/measure/cmm-2023-01. NMFS has implemented through other rulemakings other relevant provisions of CMM 2023-01, and is undertaking separate rulemakings to implement the other provisions of CMM 2023-01 not yet implemented.

Purpose and Need

The purpose and need are essentially the same as established in Section 1.4 of the PEA and Section 1.1 of the SEA are incorporated herein by reference.[2]

Proposed Action

In accordance with CMM 2023-01, NMFS proposes to establish a FAD prohibition period from July 1 through August 15 in each calendar year in the Convention Area between the latitudes of 20° N and 20° S (inclusive of the EEZs and high seas in the Convention Area and excluding the area of overlap between the WCPFC and the Inter-American Tropical Tuna Commission (IATTC)). Regarding the additional one-month FAD prohibition period on the high seas in the Convention Area, NMFS is proposing to implement the high seas FAD prohibition period in December in 2024 and in each calendar year thereafter (excluding the area of overlap between the WCPFC and the IATTC).

Scope of SIR

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.

[2] NMFS notes that CMM 2023-01 was adopted after the publication of the PEA and SEA, so the references in the purpose and need statements are to prior CMMs. However, the intent of the purpose and need statement remains the same for this proposed action.

Criteria for Supplementing NEPA Analysis

The CEQ regulations 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(d)(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 SEA in 2021, NMFS has published and received new information relevant to the proposed action. This SIR reviews new information and circumstances to determine whether or not the agency must supplement the SEA. 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 PEA, as supplemented by the 2021 SEA, includes relevant analyses for this proposed rule.

The PEA analyzed the No-Action Alternative and 10 action alternatives (see Section 2.1 and Table 1 in the 2015 PEA). The SEA examined the alternatives considered in the 2015 PEA and updated them as appropriate (see Section 1.2 of the SEA). The SEA analyzed the No-Action Alternative and 12 action alternatives. The No-Action Alternative in the PEA and SEA was defined as no implementation of WCPFC tropical tunas decisions. Although NMFS implemented several of the provisions in WCPFC tropical tunas decisions to remain in effect until replaced or amended in 2018 (83 FR 33851; July 18, 2018), NMFS did not analyze the continuation of those provisions as part of the No-Action Alternative (Alternative A) in the 2021 SEA. Instead, NMFS analyzed the continuation of those provisions currently in place as part of a separate action alternative – Alternative I (Variation of Status Quo 1). NMFS analyzed Alternative A, the No-Action Alternative, as the implementation of no WCPFC tropical tunas provisions even though the agency would have to take action to remove the regulations implementing the WCPFC tropical tuna provisions that were in place at that time. At the time the PEA was developed, the no-action alternative would have resulted in no WCPFC tropical tunas management measures in place due to the fact that the regulations in place had sunset. The alternatives in the SEA were developed with consistency to the PEA as well as to examine the baseline condition of no WCPFC tropical tunas management measures in place. Thus, under Alternative A, no FAD prohibition periods for the Convention Area or high seas would be in effect.

Each action alternative in the 2021 SEA included sub-alternatives for implementing the FAD closure periods for U.S. purse seine fishing vessels. The FAD closure periods for the entire Convention Area included the sub-alternatives of three months, four months, or the full year; the FAD closure periods for the high seas included the sub-alternatives of a closure period for the full year or a closure period for November and December of each year. As stated above, under Alternative I (Variation of Status Quo 1) NMFS analyzed three months of FAD closure periods

for the entire Convention Area and a closure period on the high seas of November and December each year (excluding the area of overlap between the WCPFC and the IATTC).

The PEA and SEA did not expressly consider an alternative that included FAD prohibition periods of 1.5 months across the Convention plus 1 month in the high seas only, which is the proposed action. However, CEQ guidance provides that supplementation is not required where an alternative is a minor variation of one of the alternatives discussed in existing NEPA, and the new alternative is "qualitatively within the spectrum of alternatives already considered." Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 FR 18,026, 18,035 (March 23, 1981). Here, the SEA evaluated alternatives of unrestricted FAD fishing (Alternative A), and FAD prohibition periods of 3 months Convention-wide and 2 months on the high seas only (Alternative I). Accordingly, the proposed action is a minor variation of the alternatives considered in the SEA and falls within the spectrum of alternatives considered in the SEA (Alternatives A and I).

In the SEA, NMFS defined the timeframe for the analysis as from 2021-2025, stating that NMFS believes that analysis over a five-year time period is reasonable, because that is the period in which NMFS can reasonably forecast stock conditions and fleet behavior in the future. While the SEA analyzed the impact of multiple different WCPFC management measures, Alternative I analyzed the potential effect of each management measure (e.g., FAD prohibition periods, purse seine effort limits, bigeye tuna catch limits, etc.) separately. The rest of the regulatory environment as analyzed under Alternative I is the same as now, with the exception of the changes described below, which have no bearing on the proposed action or its impacts which were not considered in the SEA.

The below discussions provides a summary of the analyses of effects under Alternative A, the No-Action Alternative, and under Alternative I, the status quo alternative. The effects of the proposed action would be in between the effects under Alternative A and Alternative I, since the proposed action would implement FAD prohibition periods that are shorter in duration than under Alternative I.

Analysis of Effects under Alternative A, the No-Action Alternative, in the SEA

Chapter 2 in the SEA presents the analysis of Alternative A, the No-Action Alternative. Under Alternative A, the FAD prohibition periods would not be in effect and there would be no direct changes to the fishing patterns and practices of the fleet from any FAD prohibition periods. As stated in Section 2.1.1 of the SEA, there are also unlikely to be indirect effects to the fleet under this alternative. However, it is conceivable that under this alternative the indirect effects (or long-term effects) would be that the objectives of the proposed action for the sustainability of tropical tuna stocks would be less likely to be reached, because the specific management measures would not be in effect. This could be expected to adversely affect the catch rates of the U.S. WCPO purse seine fleet and the profitability of fishing businesses. However, many other factors affect the stock status of bigeye tuna, yellowfin tuna, and skipjack tuna in the WCPO (such as oceanographic conditions and fishing by non-U.S. fleets).

Alternative A, the No-Action Alternative, would not be expected to cause direct effects to the physical environment of the WCPO or to affect climate change, as stated in Section 2.5 of the SEA. Similarly, as stated in Section 2.6.1 of the SEA, because there would no direct changes to the fishing patterns and practices of the fleet due to implementation of WCPFC tropical tunas measures, including the FAD prohibition periods, there would no resulting direct effects to bigeye tuna, yellowfin tuna, or skipjack tuna if no FAD prohibition period was in place. However, because Alternative A would not implement the WCPFC tropical tunas management measures for purse seine and longline fisheries, the objectives of the Commission for management of tropical tunas in 2021-2025 would be less likely to be met under this alternative than under any of the action alternatives. It is conceivable that the indirect effects (or long-term effects) of this alternative on bigeye tuna, yellowfin tuna, and skipjack tuna would be increased fishing pressure on stocks relative to the action alternatives, leading to a decline to sizes smaller than that which is capable of producing maximum sustainable yield.
On the other hand, many other factors (e.g., ocean conditions and market conditions) affect the status of these stocks. Thus, it is likely that the status of the stocks under the No-Action Alternative would not differ substantially from the status of the stocks under any of the action alternatives. Under this alternative, however, any minor beneficial effects that the stocks could experience from implementation of the action alternatives would not occur. Thus, there could be some marginal increased potential for long-term negative effects to the stocks over the action alternatives, although such effects cannot be predicted or estimated with certainty at this time.

As stated in Section 2.8.1 of the SEA, it is conceivable that the indirect, or long-term, effects of the No-Action Alternative on bigeye tuna, skipjack tuna, and yellowfin tuna would be negative, should this alternative lead to increased fishing pressure on the stocks, relative to the action alternatives. Any such increased fishing pressure could also lead to long-term negative effects on non-target fish species that are caught by the U.S. WCPO purse seine fleet. However, as discussed in section 1.3.7 of the SEA, the U.S. WCPO purse seine fleet does not generally catch a substantial amount of other fish species. Also, given that many other factors influence the status of non-target fish species (e.g., fisheries that target those species, oceanic conditions), it is unlikely that there would be any indirect effects to non-target species under the No-Action Alternative, stemming from lack of implementation of any of the action alternatives.
As stated in Section 2.9.1 of the SEA, it is conceivable that the indirect, or long-term, effects of the No-Action Alternative on bigeye tuna, skipjack tuna, and yellowfin tuna would be negative, should this alternative lead to increased fishing pressure on the stocks from the U.S. WCPO purse seine, relative to the action alternatives. Any such increased fishing pressure could also lead to long-term negative effects on protected resources with which the U.S. WCPO purse seine fleet interacts. However, given that many other factors influence the status of those species (e.g., other fisheries, oceanic conditions), it is unlikely that there would be any substantive indirect effects to protected resources stemming from lack of implementation of the action alternatives under the No-Action Alternative.
As discussed in Section 2.12 of the SEA, cumulative impacts to any of the resources in the affected environment under Alternative A, the No-Action Alternative, would not be expected to be substantial.

Analysis of Effects under Alternative I, the Status Quo Alternative, in the SEA

Chapter 2 in the SEA presents the analysis of Alternative I, the status quo alternative. Under Alternative I, there would be a three month FAD setting prohibition in the entire Convention Area. As stated in Section 2.1.9.2 of the SEA, these restrictions would be identical to those described under Alternative B (Least Restrictive Action Alternative) in the SEA, so the effects to the U.S. purse seine fleet under this alternative are detailed in Section 2.1.2.5 of the SEA and copied here. Although being more successful at catching fish, FAD sets tend to yield smaller fish, including smaller bigeye and yellowfin tuna, while unassociated sets tend to yield larger fish – primarily skipjack tuna and yellowfin tuna, typically with very few bigeye tuna.

The overall composition of the catch, in terms of both species and fish sizes, made by the fleet would likely be affected by the FAD setting prohibition period. It is expected that there would be a transfer of effort to fishing on unassociated sets during the prohibition period given that represents the only viable fishing option if vessels continue to operate – so the composition of the catch during those periods would likely consist of less bigeye tuna than would occur under the No-Action Alternative and perhaps more larger-sized yellowfin tuna and skipjack tuna. Bigeye tuna account for a small percentage of the catch of the U.S. purse seine fleet operating in the WCPO. However, with respect to yellowfin tuna and skipjack tuna, which are caught in substantial amounts in both FAD sets and unassociated sets, the effects of the FAD restrictions are less straightforward. The WCPO stock of yellowfin tuna is expected to be relatively insensitive to a shift to unassociated sets, but some studies indicate that the stock would be more likely to increase in size than decrease. The effects of the FAD restrictions for WCPO skipjack tuna are not known.

During the FAD setting prohibition period, vessel operators fishing would be able to set only on unassociated schools. This constraint on the type of set that may be made at any given time may adversely affect vessels' profitability depending on the availability of school fish. Vessel operators might be able to mitigate those impacts by choosing to schedule their routine vessel and equipment maintenance during time when FAD setting is prohibited. Nonetheless, it is conceivable that the FAD restrictions could lead a change in fishing effort by the U.S. WCPO purse seine fleet in the years 2021 through 2025 than would occur without the restrictions. However, during the FAD setting prohibition period in 2009-2019,[3] there was no substantial change in the proportion of the fleet that fished during those months in each of those years when compared to the proportion that fished during those months in 1997-2008 when no FAD setting prohibition periods were in place. Thus, little effect on overall fishing effort is expected to result from this element of the alternative. Overall, the three month FAD setting prohibition period is expected to affect the fishing patterns and practices of the fleet by transferring fishing effort from FAD sets to unassociated sets, which could incur additional costs in terms of searching and more sets, as compared to the No-Action Alternative.

Under Alternative I, there would also be a two month FAD setting prohibition on the high seas in the Convention Area. As stated in Section 2.1.9 of the SEA, for the purposes of the analysis, those two months could take place any time in the year. The fleet makes a sizable proportion of

[3] In the Regulatory Impact Review prepared for this proposed action, more recent data continues to support the conclusions and analysis in the SEA (NMFS 2024a).

FAD sets on the high seas each year in comparison to total sets, but the proportion varies each year. Catch, effort, and number of FAD sets for the fleet varies from year to year, and is influenced by various factors, including oceanographic and economic conditions. The data also indicate that the high seas appear to be no different in importance relative to the other fishing grounds in terms of FAD sets.

Under Alternative I, the fleet would still be able to fish on FADs throughout the 9 months of the calendar year in which FAD sets would be allowed in the remainder of the Convention Area.

The prohibition on fishing on FADs on the high seas for two months could cause the fleet to transfer some of its effort from associated sets to unassociated sets during those two months, if it continues to fish at the same rate on the high seas, or could cause the fleet to transfer its effort from the high seas to the U.S. EEZ or to the EEZs of Pacific Island Parties (PIPs) to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America. Should the high seas FAD setting prohibition result in fewer overall FAD sets, there could be resulting consequences on the composition of the catch – perhaps more larger-sized yellowfin tuna and more larger-sized skipjack tuna, and likely less bigeye tuna. As stated above, bigeye tuna account for a small percentage of the catch of the U.S. purse seine fleet operating in the WCPO. However, with respect to yellowfin tuna and skipjack tuna, which are caught in substantial amounts in both FAD sets and unassociated sets, the effects of the FAD restrictions are less straightforward. The WCPO stock of yellowfin tuna is expected to be relatively insensitive to a shift to unassociated sets, but some studies indicate that the stock would be more likely to increase in size than decrease. The effects of the FAD restrictions for WCPO skipjack tuna are not known.

As stated in Section 2.5 of the SEA, none of the alternatives would be expected to cause direct or indirect effects to the physical environment of the WCPO. In addition, none of the alternatives would be expected to contribute to climate change. Under the action alternatives, the measures could marginally increase fuel use, if vessels in the fleet steam to locations farther than they otherwise would, due to any fishery closure or restriction that leads vessels to seek opportunities in locations than they otherwise would. However, measures could also cause an overall decrease in fuel use if there is an overall decrease in fishing effort by the fleets. Moreover, given that the catch and effort of the fleets vary substantially from year to year, the overall fuel use of the fleet would be expected to depend more on other factors (fuel price, market conditions, oceanographic changes affecting the location of the target tunas, etc.), and the action alternatives would not be expected to lead to increased emissions of greenhouse gases affecting climate change.

As stated in Section 2.6.9 of the SEA, under Alternative I, during the three month FAD setting prohibition period, fishing effort could be transferred to unassociated sets, with resulting consequences on the composition of the catch – perhaps more larger-sized yellowfin and skipjack tuna and likely less bigeye tuna. With respect to yellowfin tuna and skipjack tuna, which are caught in substantial amounts in both FAD sets and unassociated sets, the effects of the FAD restrictions are less straightforward. The WCPO stock of yellowfin tuna is expected to be relatively insensitive to a shift to unassociated sets, but some studies indicate that the stock would be more likely to increase in size than decrease. The effects of the FAD restrictions for WCPO skipjack tuna are not known. The two month high seas FAD setting prohibition period in

each of the calendar years 2021-2025 could also transfer effort to unassociated sets on the high seas or to FAD sets in the U.S. EEZ or in PIPs EEZs.

Overall, because the fishing patterns and practices of fleets would not be expected to change substantially under Alternative I from the No-Action Alternative, and, as described in Chapter 3 of the 2015 PEA, 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 bigeye, yellowfin, and skipjack tuna from implementation of Alternative I would be expected to be small.

As stated in Section 2.8.2 of the SEA, under Alternative I, there could be some change in the amount and type of non-target fish species caught by the U.S. WCPO purse seine. Direct impacts to non-target fish species would include a potential increase in the catch of some species and a decrease in the catch of other species, due to the changes in fishing patterns and practices of the fleet and the shift in fishing to unassociated sets during the implementation of any purse seine FAD setting restrictions. Indirect or long-term effects would include the greater potential for adverse effects to the stocks of non-target fish species that experience increased fishing mortality and reduced potential for adverse effects to the stocks of non-target fish species that experience decreased fishing mortality. Because the U.S. WCPO purse seine fleet does not generally catch large amounts of other non-target fish species, as discussed in Section 1.3.7 of the SEA, the overall direct and indirect effect on non-target fish species under any of the action alternatives would be expected to be minor or negligible.

As stated in Section 2.9.2 of the SEA, the direct and indirect effects to protected species from the U.S. WCPO purse seine fishery under the implementation of any of the action alternatives would likely be negligible. To the extent that there is a shift in fishing patterns and practices, from FAD sets to unassociated sets or to fishing in the [eastern Pacific Ocean (EPO)] or EEZs of PIPs, any effects in terms of interactions with protected resources would be expected to be small compared to typical year-to-year variations in interactions with species driven by changing oceanic and economic conditions.

As discussed in Section 2.12 of the SEA, cumulative impacts to any of the resources in the affected environment under Alternative I would not be expected to be substantial.

Evaluation of the Proposed Action

As described above, the domestic implementation of the WCPFC decisions on tropical tunas covered in the SEA included analysis of the implementation of FAD closure periods ranging from zero to 12 months under the range of alternatives analyzed. Thus, NMFS has analyzed the proposed action's implementation of the FAD closure periods for U.S. purse seine vessels through 2025.

Evaluation of New Information Available Since Preparation of the Existing NEPA Analyses

The following is new information available on resources in the affected environment since publication of the 2015 PEA and 2021 SEA:

1. NMFS published a final rule on WCPFC requirements to safeguard fishery observers and establish pre-trip notifications for observer placement (86 FR 35653; July 7, 2021).

   The new requirements for observer safety and pre-trip notifications are changes to reporting requirements. NMFS completed a categorical exclusion memo for the final rule to implement those requirements and described the effects of those requirements as follows:

   The proposed action may affect the operations of purse seine and longline fisheries if an observer safety event would result in the curtailment of a fishing trip. Over 2015-2019, NOAA Office of Law Enforcement has charged six cases of harassment against purse seine and longline vessels in the Pacific Islands Region, which equates to approximately one observer safety event per year. Therefore, the events that would trigger the proposed action are expected to happen rarely. The WCPFC has indefinitely deferred placement of WCPFC observers on troll vessels so the proposed action is unlikely to affect operations of troll vessels. However, if WCPFC observers were placed on troll vessels in the future, the proposed action would be expected to have similar or lesser effects as those expected for the purse seine and longline fisheries. This document incorporates *Regulatory Impact Review for a Rule to Implement Decisions of the Western and Central Pacific Fisheries Commission for: Requirements to Safeguard Fishery Observers* by reference. The RIR provides detailed analysis of the potential economic impacts from the proposed action and concludes there generally would be minimal or trivial economic impacts. Although the proposed action might result in a change of timing, effort and harvest level of any individual trip, the proposed rule would not individually or cumulatively have a significant effect on the quality of the human environment.

   While this action could potentially impact operations of the purse seine fishery, it does not represent a substantial change to the operation of the fishery as analyzed in the SEA because, as stated above, there would expected to be at the most one observer safety event per year in purse seine and longline fisheries. Impacts of the fishery operating under this observer safety requirement are substantially the same as the impacts of the fishery considered in the SEA.

2. NMFS published a BiOp 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.[4] The Purse Seine BiOp 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,

[44] Biological Opinion for the Authorization of the United States Western and Central Pacific Ocean Purse Seine Fishery (Purse Seine BiOp; NMFS 2021b).

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 Purse Seine BiOp sets forth specific reasonable and prudent measures (RPMs), as well as specific terms and conditions (T&Cs) for implementing those RPMs, to minimize impacts from the fishery on listed species. NMFS' implementation of those RPMS and T&Cs could lead to some new requirements on the fleet.

The Purse Seine 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.

In Sections 1.3.9.1 and 2.9.2 of the SEA, NMFS discussed the status of ESA-listed species and the anticipated impacts to the species from the U.S. purse seine fleet operating in the Convention Area. Section 1.3.9.1 also included a detailed summary of the ongoing ESA Section 7 consultation. NMFS completed the SEA in May 2021; as stated above, the Purse Seine BiOp was published in September 2021. Thus, the information in the Purse Seine BiOp is substantially similar to the information on ESA-listed species and analysis of impacts included in the 2021 SEA.

The Purse Seine BiOp established a maximum 5-year running sum and 5-year running average to monitor the action's incidental take of threatened and endangered species. Over any five consecutive years the number of interactions are not to exceed the defined 5-year running sum. The 95th percentile is designed to be used by NMFS as a check on the fishery's performance against the estimated take, and would act as a signal that the fishery may be on a path to exceed the exempted take. If the 95th percentile is exceeded in two years, within a 5-year period, it is unlikely the fishery will meet the maximum 5-year running average or running sum, and reinitiation will be warranted.

Preliminary data suggest that the incidental take statement for the oceanic whitetip shark included in the Purse Seine BiOp may have been exceeded. The data indicates the fishery exceeded the 95th percentile for 2021 and 2022, and suggests that the five year running average may have been exceeded in 2023. Although data for 2023 are unavailable at this time, based on the rate of 2021 and 2022 interactions, NMFS concluded that the maximum five-year running sum of interactions for the oceanic whitetip shark was likely exceeded at some point in 2023, and reinitiated consultation for the oceanic whitetip shark on July 31, 2024.

NMFS also determined that the continued authorization of the fishery during the consultation period is not reasonably expected to cause an appreciable reduction in the likelihood of the survival or recovery of the oceanic whitetip shark; that is, it is not likely to jeopardize the continued existence of the oceanic whitetip shark under Section 7(a)(2). NMFS also determined that authorization of the U.S. WCPO purse seine fishery during the one-year period of consultation does not constitute an irreversible or irretrievable commitment of resources under ESA Section 7(d), in that it would not affect the ability of NMFS or vessel owner/operators to change their management regime or otherwise modify the conduct of the fishery, should NMFS identify a reasonable and prudent alternative to the existing fishery. These determinations were documented in a memorandum dated August 4, 2024.

The most recent available data on oceanic whitetip interactions for the U.S. WCPO purse seine fishery is limited and for 2021 and 2022. Observer coverage requirements in the WCFPC were waived due to the COVID-19 pandemic from 2020-2022, and so the majority of information available for interactions in the WCPO is from observer data that was collected opportunistically by observers placed by the Inter-American Tropical Tuna Commission (IATTC) for trips that also occurred in the IATTC. This data indicate that total estimated interactions for 2021 were 197.91 oceanic whitetip sharks and total estimated interactions for 2022 were 244.92 oceanic whitetip sharks. Using this data, an average of 221.4 oceanic whitetip shark interactions can be estimated to occur in the fishery per calendar year. Thus, an estimated 221.4 oceanic whitetip shark interactions would occur during the period of consultation.

Based on information from the Purse Seine BiOp in Section 6.9 and a 2020 NMFS memorandum, the WCPO oceanic whitetip shark population is estimated to be 775,214 individuals with a rate of decline of 1.6% per year with an expectation that the population size would be 703,708 in 2025. Given the new information indicating that the declining population trend for the oceanic whitetip shark may stabilize or reverse and that the one-year period of consultation would be completed prior to the end of 2025, the population size of 703,708 could be used as low estimate of the expected 2025 population size. Interactions with 221.4 oceanic whitetip shark over the one-year period of consultation would equate to interactions with .03 percent of the total population. The Purse Seine BiOp assumed an 84.2% mortality rate for purse seine caught sharks and thus we anticipate that of the 221.4 oceanic whitetip sharks, 184 of those individuals would be killed by the U.S. purse seine fleet during the one year period of consultation, which represents 0.02 percent of the total estimated population in 2025.

Thus, the U.S. purse seine fishery is unlikely to appreciably reduce the likelihood of survival and recovery of the oceanic whitetip shark during the period of consultation. Our analysis finds that the conclusions and no-jeopardy finding for oceanic whitetip in the Purse Seine BiOp remain valid, notwithstanding the incidental take statement (ITS) exceedance of the 95th percentile value of 160 in 2021, 2022, and the likely exceedance of the 5-year running sum of 514 between 2021 and 2023. Given the above analyses, we expect the population to remain large enough to maintain genetic heterogeneity, broad demographic representation, and successful reproduction, and to retain the potential for

recovery. We conclude that the continued authorization of the fishery during the consultation period is not reasonably expected to cause an appreciable reduction in the likelihood of the survival or recovery of the oceanic whitetip shark; that is, it is not likely to jeopardize the continued existence of the oceanic whitetip shark under Section 7(a)(2). Under Section 7(o) of the ESA, any take during the period of reinitiated consultation that is in compliance with the terms and conditions of the Purse Seine BiOp shall not be considered to be a prohibited take of the species. During the reinitiation period before the signing of a new biological opinion, NMFS has been, and will continue to be, in compliance with those terms and conditions.
The 2021 SEA evaluated impacts of the fishery operating under unrestricted FAD fishing on the oceanic whitetip shark, and up to three months of restricted FAD fishing in the Convention Area plus an additional two months on the high seas in the Convention Area, and found this is not likely to significantly impact the oceanic whitetip shark (Sections 2.9.1 and 2.9.2 of the 2021 SEA). This action will implement FAD prohibition periods of 1.5 months in the Convention Area and 1 month on the high seas in the Convention Area, so impacts are expected to fall within the range of impacts already considered.

The 2021 SEA largely relied on the analysis of the Purse Seine BiOp, which found the fishery is not likely to jeopardize the oceanic whitetip shark. The Purse Seine BiOp considered that the status of the oceanic whitetip was in decline, but determined the operation of the fishery, as currently managed, were not likely to jeopardize the continued existence of the oceanic whitetip shark.

Since the Purse Seine BiOp was completed in 2021, the WCPFC has adopted a new conservation and management measure for sharks. Bigelow et al. (2022) evaluated the potential impact of the new conservation and management measure and suggested that its provisions - prohibiting retention, improving handling and release conditions, and shifting to monofilament leaders - are likely to result in increasing population trends for WCPO oceanic whitetip sharks.
New NMFS requirements as well as a reduction in the number of vessels in the fleet indicate that there could be reduced fishery impacts to the oceanic whitetip shark from those analyzed in the 2021 SEA.

As discussed in more detail below, NMFS implemented new requirements on the purse seine fishery for lesser entangling FADs, as well sharks and rays in 2023. The new requirements have the potential to reduce impacts to protected species such as the oceanic whitetip shark.

In addition, NMFS published a final rule to prohibit the use of wire leaders in the Hawaii 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). In an environmental assessment prepared for that rulemaking, NMFS concluded that the likely effects would be a reduction in mortality from interactions between the Hawaii deep-set longline fishery and oceanic whitetip sharks.

The U.S. purse seine fleet size at the time of publication of the SEA was 18 vessels; it is currently 13 vessels, or 5 fewer vessels, indicating likely reduced effort in the fleet for the foreseeable future.

The incidental take statement represents an expected number of interactions between the fishery and the oceanic whitetip shark, but it does not necessarily represent a level above which the fishery jeopardizes the species. Thus, while the data for 2021 and 2022 suggest that there may have been have interactions higher than expected, that fact, taken together with improved stock status trends, reduced fleet size, and new mitigation measures, indicates the analysis and conclusions in the SEA regarding the fishery's impacts on oceanic whitetip shark has not appreciably changed. The new information available since publication of the SEA is not, at this time, significant new information relevant to environmental concerns and bearing on the proposed action or its impacts that was not considered in the SEA.

3. NMFS published a final rule to implement WCPFC decisions on International Maritime Organization Numbers, FAD design requirements, and bycatch mitigation measures for sharks and mobulid rays (see 88 FR 30671; published May 12, 2023). This final rule implements new requirements for U.S. purse seine fishing vessels operating in the Convention Area.

   Section 2.12 of the SEA 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.

   NMFS published an environmental assessment (2021 EA; NMFS 2021c) to analyze the environmental effects of the new requirements. The EA concluded that the proposed action could have, at the most, minor effects on existing fishing operations, and would not lead to substantial effects on resources in the affected environment.

   The new requirements for IMO numbers, FAD designs, and shark/ray mitigation may modify operation of the purse seine fishery. However, these requirements do not substantially change the operation of the fishery as analyzed in the SEA because, as stated above, the 2021 EA concluded that the proposed action could have, at the most minor effects on existing fishing operations, and would not lead to substantial effects on resources in the affected environment. Thus, impacts of the fishery operating under these new requirements are expected to be substantially the same as impacts already considered in the SEA, with the potential that impacts to protected species might be reduced by the FAD design requirements and shark/ray mitigation measures.

4. Subsequent to publication of the SEA, some new information has been produced regarding the applicable stocks of bigeye tuna and yellowfin tuna.

   a. A new WCPFC stock assessment of yellowfin tuna in the WCPO was published in 2023 (Magnusson et al., 2023). The general conclusions of this assessment include:

i. The spawning potential of the stock has become more depleted across all model regions until around 2010, after which it has become more stable, or shown a slight increase.
ii. Average fishing mortality rates for juvenile and adult age-classes have increased throughout the period of the assessment, although more so for juveniles which have experienced considerably higher fishing mortality than adults.
iii. In the recent period, a sharp increase in juvenile fishing mortality is estimated, while adult fishing mortality has stabilized.
iv. No models from the uncertainty grid, including estimation uncertainty, estimate the stock to be below the Limit Reference Point (LRP) of $20\%SB_{F=0}$.
v. Assessment results suggest that the yellowfin stock in the WCPO is not overfished, nor undergoing overfishing.

New information is available on the impacts of associated versus unassociated sets for yellowfin tuna in the WCPO. This information indicates that the WCPO stock of yellowfin tuna is expected to be somewhat sensitive to a shift to unassociated sets, and while projections indicate this stock is more likely to decrease in size than increase, it is believed that this is more due to the effects of increased impacts of the domestic fisheries of the Philippines and Indonesia (SPC 2023).

The SEA evaluated the impacts of FAD fishing on yellowfin tuna, and determined that FAD fishing would be expected to have little effect on overall yellowfin mortality, but could potentially lead to increased mortality. As stated above, new information on the impacts of FAD fishing on yellowfin tuna suggest that the stock might be more sensitive to FAD fishing than previously considered and actually lead to decreased mortality. However, this new information does not substantially change the analyses of the SEA, as this new information is due to operations of non-U.S fisheries. In addition, the SEA considered that FAD fishing could potentially impact mortality, but ultimately determined any impacts were expected to be minor compared to the overall effects of other factors acting on the stock. The new information does not affect this conclusion.

Also, the SEA evaluated the impacts of FAD fishing on yellowfin tuna stock abundances, including the impacts of both unrestrained FAD fishing, and prohibiting FAD fishing up to three months in the Convention Area and one additional month on the high seas (Section 2.6 of the 2021 SEA). The proposed action of prohibiting FAD fishing for 1.5 months on the Convention Area and one month on the high seas falls within the spectrum of the alternatives analyzed in the SEA, so impacts on yellowfin tuna are expected to fall within the scope of impacts already considered.

Additionally, the recent stock information on yellowfin tuna is not expected to significantly alter the SEA's analyses of impacts of FAD fishing on yellowfin tuna because, as stated in the 2021 SEA, many other factors contribute to the status of the stocks (fishing activities by non-U.S. fleets, oceanographic conditions, etc.), so the

direct and indirect effects to yellowfin tuna from U.S. purse seine fishing operations alone would be expected to be small.

b. A new WCPFC stock assessment of bigeye tuna in the WCPO was published in 2023 (Day et al, 2023). The general conclusions of this assessment include:
    i. The spawning potential of the stock has become more depleted across all model regions until around 2010, after which it has become more stable.
    ii. Average fishing mortality rates for juvenile and adult age-classes have increased throughout the period of the assessment until around 2000, after which they have stabilized, but with high inter-annual variability for juveniles. Juveniles have experienced considerably higher fishing mortality than adults.
    iii. No models from the uncertainty grid, including estimation uncertainty, estimate the stock to be below the LRP of 20% $SB_{F=0}$.
    iv. Assessment results suggest that the bigeye stock in the WCPO is not overfished, nor under-going overfishing.

The SEA evaluated the impacts of FAD fishing on bigeye tuna stock abundances, including the impacts of both unrestrained FAD fishing, and prohibiting FAD fishing up to three months in the Convention Area and one additional month on the high seas (Section 2.6 of the 2021 SEA). The proposed action of prohibiting FAD fishing for 1.5 months on the Convention Area and one month on the high seas falls within the spectrum of the alternatives analyzed in the SEA, so impacts on bigeye tuna are expected to fall within the scope of impacts already considered. Additionally, the recent stock information on bigeye tuna is not expected to significantly alter the SEA's analyses of impacts of FAD fishing on bigeye tuna because, as stated in the 2021 SEA, many other factors contribute to the status of the stocks (fishing activities by non-U.S. fleets, oceanographic conditions, etc.), so the direct and indirect effects to bigeye tuna from U.S. purse seine fishing operations alone would be expected to be small.

c. Table 14 of the SEA lists the EPO stock of yellowfin tuna as experiencing overfishing. The EPO stock of yellowfin tuna is no longer considered to be experiencing overfishing under the NMFS stock status determination criteria (NMFS 2023b). Thus, should there be a shift in fishing effort to the EPO under the proposed action, there could be reduced adverse effects to the overall status of the stock since the stock is in better shape than when the 2021 SEA was published. However, as stated in the SEA, because many other factors contribute to the status of the stocks (fishing activities by non-U.S. fleets, oceanographic conditions, etc.), the analysis and conclusions in the SEA remain unchanged from this new information.

5. The SEA included catch and effort data through 2019 and fleet participation data through mid-2021. More recent data are available regarding U.S. purse seine fishing operations.

This information is included in the RIR for the proposed action (NMFS 2024a) and summarized here.

As of January 2024, there were 13 U.S. purse seine vessels listed on the WCPFC Record of Fishing Vessels. This is five vessels less than the 18 vessels discussed in the SEA. Effort and catch in 2021 and 2022 were also substantially reduced from earlier years, perhaps due to the effects of the COVID-19 pandemic.

However, as shown in Figures 1 and 2 of the RIR, the proportion of the fleet that fished by month has remained relatively consistent since 1997.

The SEA did not include quantitative analysis regarding the impacts of implementing the FAD prohibition periods on fishing operation and resources in the affected environment. The SEA did include qualitative analysis of the effects of not implementing no FAD prohibition periods as well as implementing a three month FAD prohibition period in the Convention Area and an additional two month FAD prohibition period of the high seas. This action will implement FAD prohibitions of 1.5 months in the Convention Area and 1 month on the high seas in the Convention Area, so impacts are expected to fall within the range of impacts already considered, and could even be somewhat reduced based on the new data, but that reduction in impacts would not be possible to quantify or accurately assess.

In addition, data from 2021 and 2022 indicate that the majority of U.S. purse seine sets were made on drifting FADs, as the fleet fished further east (Williams and Ruaia 2023). The SEA accounted for variability in the ratio of FAD sets (or the proportion of FAD sets to unassociated sets). Section 2.1.3.3 of the SEA (though focused on analysis of a management measure different than the proposed action) explicitly stated that "the proportion of all sets that are FAD sets ("FAD set ratio") in the U.S WCPO purse seine fishery has varied widely from year to year – from less than 30% to more than 90%." So, the effects of a high proportion of FAD sets were taken into account in the SEA analysis and the new information does not affect that analysis.

Thus, the new information available since publication of the SEA is not significant new information relevant to environmental concerns and bearing on the proposed action or its impacts that was not considered in the SEA.

Public Involvement and Interagency Review

The underlying action (implementing purse seine FAD closure periods) has already been evaluated in NEPA documents and subject to public comment. The modifications to these closure periods that would be implemented under the proposed rule are also within the scope of what has already been analyzed and subject to public comment. The PEA and SEA were 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. A draft of this SIR was also made available for public comment, and no comments included new information indicating further supplementation of existing NEPA was warranted.

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 PEA and SEA and has concluded the following:

1. The potential impacts from the proposed action on the human environment were fully analyzed in the PEA and SEA;
2. The resources potentially affected by the proposed action were adequately described and evaluated in the PEA and SEA; and
3. At this time, there are 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 PEA and SEA.

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 PEA or SEA, I have determined the analysis in the PEA and SEA 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.

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cc: F/PIRx1 – Philibotte
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