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Finding of No Significant Impact

Changes to Purse Seine Fish Aggregating Device Closure Periods – RIN 0648-BM86

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.

Background

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 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 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.[1] 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.

The effects of the proposed action would be in between the effects under Alternative A (the No-Action Alternative of no FAD prohibition periods in place) and Alternative I (the alternative of 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) analyzed in the SEA. The proposed action would implement FAD prohibition periods that are shorter in duration than under Alternative I. Thus, the discussion below references the analysis for both Alternative A and Alternative I.

NMFS also prepared a supplemental information report (SIR) to document 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 issued the SIR for public review and comment along with the proposed rule on May 29, 2024. The public comment period closed on June 13, 2024, and one comment in support of the rule was received. The comment did not include any significant new information suggesting further supplementation of existing NEPA documents was warranted.

[1] NMFS (National Marine Fisheries Service). 2018. Regulatory Impact Review for a Rule to Implement Decisions of the Western and Central Pacific Fisheries Commission for: Fishing Limits in Purse Seine and Longline Fisheries, Restrictions on the Use of Fish Aggregating Devices in Purse Seine Fisheries, and Transshipment Prohibitions; RIN 0648-BH77. April 2018. Honolulu: National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Pacific Islands Regional Office.

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). The PEA and SEA applied CEQs 1978 NEPA regulations because review of the proposed action preceded the effective date of CEQ's Phase 2 NEPA regulations (July 1, 2024). Therefore, this FONSI applies CEQs 1978 NEPA regulations. 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. Under the proposed action NMFS would modify the regulations at 50 CFR 300.223(b) so that the FAD prohibition periods would extend from July 1 through August 15 on the high seas and EEZs each calendar year, and for an additional month on the high seas in December each calendar year.

As stated above, the effects of the proposed action would be in between the effects of Alternative A and Alternative I, analyzed in the 2021 SEA. The effects of each of these alternatives are summarized below.

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

Chapter 2 in the 2021 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 2021 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 2021 SEA. Similarly, as stated in Section 2.6.1 of the 2021 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 2021 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 2021 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 2021 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 2021 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 2021 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,[2] 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 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.

[2] 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).

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.

As stated above, the effects of the proposed action would be in between the effects resulting from implementation of Alternative A and Alternative I. Thus, because the effects resulting from implementation of Alternative A and Alternative I would not be substantial, overall, the effects from the proposed action on resources in the affected environment would be minor.

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

Response: No. The proposed action would not be expected to have any effects on public health and safety. The 2021 SEA did not identify effects to public health and safety from the FAD prohibition periods under Alternative A or Alternative I and the effects of the proposed action would be in between the effects of those two alternatives.

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. Purse seine fishing generally does 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. As described in the response to Question 1, above, Alternative A would not implement FAD prohibition periods and would not be expected to substantially affect fishing patterns or practices.

Similarly, as stated in Section 2.9.2 of the SEA, such resources would not be affected under Alternative I because the potential changes in fishing patterns and practices would take place in areas of the ocean far from shorelines and would not affect the seafloor or benthic habitats since purse seine fishing does not involve contact with the seafloor. Shipwrecks would be the only known cultural objects potentially within the affected environment. However, as stated above, purse seine fishing operations do not come into contact with the seafloor, so the operations of the U.S. WCPO purse seine fleet would not be expected to affect any material from shipwrecks, which typically rests on ocean bottoms.

Thus, because the proposed action would be expected to result in effects in between Alternative A and Alternative I, the proposed action also would not be expected to affect these resources.

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 2.9.2 of the 2021 SEA. The proposed action would not affect designated critical habitat.

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 under the proposed action. 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 issued the proposed rule for public review and comment on May 29, 2024 (89 FR 46352). The comment period closed on June 13, 2024, and one comment in support of the proposed rule was received.

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 2021 SEA, 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 under the proposed action. 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 1.1 of the 2021 SEA, The purpose of NMFS' domestic implementation of WCPFC decisions on tropical tunas is to contribute to the underlying objectives of the Commission's management of tropical tuna stocks in the WCPO. The need for the domestic implementation of WCPFC decisions on tropical tunas is to satisfy the obligations of the United States as a Contracting Party to the Convention, pursuant to the authority of the WCPFCIA.

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 proposed action, as well as other reasonably foreseeable future actions identified in Section 2.12 of the 2021 SEA, would be conservation and management measures for sustainable management of these resources. Based on all information to date, the proposed action, together with reasonably foreseeable future actions, 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 2.9.2 of the 2021 SEA, shipwrecks would be the only known cultural objects potentially within the affected environment. 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 2.9.2 of the 2021 SEA presents 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.

NMFS published a BiOp for the continued operation of the U.S. WCPO purse seine fishery for ESA-listed species under NMFS jurisdiction on September 15, 2021 (Purse Seine BiOp).[3] 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, 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 2021 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.

[3] NMFS (National Marine Fisheries Service). 2021. Biological Opinion for the Authorization of the United States Western and Central Pacific Ocean Purse Seine Fishery. National Marine Fisheries Service Pacific Islands Regional Office; Honolulu; September 2021.

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[4], 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

[4] National Marine Fisheries Service (NMFS). 2020. Endangered Species Act Section 7 Consultation on the Continued Operation of the American Samoa Pelagic Longline Fishery – Section 7(a)(2) and 7(d) Determinations; Likelihood of Jeopardy and Commitment of Resources during Consultation – EXTENSION. Memorandum to the Record. M. Tosatto. National Marine Fisheries Service Pacific Islands Regional Office; Honolulu; May 6, 2020.

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)[5] 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.

[5] Bigelow, K., J. Rice, and F. Carvalho. 2022. Future Stock Projections of Oceanic Whitetip Sharks in the Western and Central Pacific Ocean (Update on Project 101). Scientific Committeee Eighteenth Regular Session. WCPFC-SC18-2022/EB-WP-02. 19 p.

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.

NMFS also 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.

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 1.1 of the 2021 SEA, The purpose of NMFS' domestic implementation of WCPFC decisions on tropical tunas is to contribute to the underlying objectives of the Commission's management of tropical tuna stocks in the WCPO. The need for the domestic implementation of WCPFC decisions on tropical tunas is to satisfy the obligations of the United States as a Contracting Party to the Convention, pursuant to the authority of the WCPFCIA.

Thus the proposed action is a conservation and management measures and will be consistent with other applicable laws.

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 classification or authorized by the commercial taking exemption under Section 118 of the MMPA.

The WCPO purse seine fishery is listed as a Category II fishery on the 2024 List of Fisheries (LOF) (89 FR 12257; February 16, 2024), 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 2024 LOF, a 101(a)(5)(E) authorization under the MMPA is not required at this time.

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. Thus, no adverse effects to managed fish species are anticipated from the proposed action.

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).

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 above, the effects of the proposed action would be in between the effects resulting from implementation of Alternative A and Alternative I. Thus, because the effects resulting from implementation of Alternative A and Alternative I would not be substantial, overall, the effects from the proposed action on managed fish species would be minor.

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 2.9.2 of the 2021 SEA, the proposed action would not cause any adverse impacts to areas designated as EFH or Habitat Areas of Potential Concern (HAPC), 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 fishing does not involve contact with the seafloor. Also, because any effects to fish stocks would not be substantial, any pelagic fish habitat designated as EFH, including the water column, or HAPC, would not be expected to experience any adverse effects from implementation of the proposed action. In other words, the small effects on the stocks would be unlikely to lead to any adverse physical, chemical, or biological alterations to fish habitat (e.g., an increase in predator or prey leading to trophic interactive effects leading to effects on habitat).

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 2.9.2 of the 2021 SEA, 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 discussed in Section 2.6 of the 2021 SEA, adult bigeye tuna and yellowfin tuna (the primary species that would be affected) are considered among the top predators of the tropical or warm pool marine ecosystem. Changes to the stocks of these species could lead to trophic interactive effects, including increased competition for prey species with other top predators. Larval and juvenile tunas are also a significant source of food for other marine species, such as fish, seabirds, porpoises, marine mammals, and sharks. Thus, increases in larval and juvenile tuna could increase the food available for these other species. It is unlikely that the effects of the proposed action to the stocks of bigeye tuna, yellowfin tuna, and skipjack tuna would be large enough to impact the marine ecosystem. Overall, the alternatives would not be expected to cause substantial effects on biodiversity and ecosystem function.
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 throughout Chapter 2 of the 2021 SEA, the main effects from the proposed action would not be expected to be substantial. The proposed action could result in some changes in the number of FAD sets versus unassociated sets and the timing of those FAD sets. However, NMFS does not expect that fishing vessels would enter 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 2015 PEA and 2021 SEA for the rulemaking titled "Changes to Purse Seine Fish Aggregating Device Closure Periods (RIN 0648-BM86)," 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.

MALLOY.SARAH.JOAN.1262526743 Digitally signed by MALLOY.SARAH.JOAN.1262526743 Date: 2024.08.16 13:12:12 -10'00' 2024-08-16

Deputy Regional Administrator Date
Pacific Islands Regional Office