



**U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE**

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MAR 12 2010

Mr. Edwin Reyes
Administrator
Guam Coastal Management Program
Bureau of Statistics and Plans
P.O. Box 2950
Hagatna, Guam 96932

SUBJECT: Federal Consistency Determination; Proposed Rule for Western and Central Pacific Fisheries for Highly Migratory Species; 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)

Dear Mr. Reyes:

The National Marine Fisheries Service (NMFS) is undertaking a rulemaking to carry out the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). The proposed action would put into place limits on fishing effort by U.S. purse seine fishing vessels in a specific area within the Convention Area, restrictions on the use of fish aggregating devices by U.S. purse seine vessels, and prohibitions on transshipment in a specific area of the high seas – the Eastern High Seas Special Management Area (EHSSMA). The proposed action would also remove existing reporting requirements for the EHSSMA and correct outdated cross references in existing regulatory text.

Pursuant to the Coastal Zone Management Act of 1972, as amended (CZMA; 16 U.S.C. § 1456(c)(1)(C)), and the National Oceanic and Atmospheric Administration's regulations implementing the federal consistency requirements of the CZMA at 15 CFR Part 930, NMFS has determined that the rule is consistent to the maximum extent practicable with the enforceable policies of Guam's Coastal Zone Management Program.



Enclosed please find a consistency determination that includes the information required by 15 CFR 930.39. I am writing to request your concurrence with our determination. As certain elements of the proposed action need to go into effect by July 1, 2018, I am requesting a shortened timeframe for our coordination, as specified under 15 CFR 930.41(c). I request your response no later than April 13, 2018. Please contact Rini Ghosh (808-725-5033) if you have any questions or need any additional information.

Sincerely,



Michael D. Tosatto
Regional Administrator

Enclosure

cc: Tina Mafnas, Guam Coastal Management Program
Frederick Tucher, Chief, Pacific Islands Sec., NOAA Office of General Counsel

Coastal Zone Management Act Federal Consistency Determination

Agency: National Marine Fisheries Service (NMFS)

Relevant Authorities: The Coastal Zone Management Act of 1972, as amended (CZMA; 16 U.S.C. 1451 *et seq.*); CZMA Federal Consistency Regulations (15 CFR Part 930)

Determination: Consistent to the maximum extent practicable with the enforceable policies of Guam's Coastal Zone Management Program

Description of proposed activity: NMFS plans to issue a rule to implement decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission) for the United States. The rule would be issued under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act; 16 U.S.C. 6901 *et seq.*).

The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention) governs fisheries for highly migratory species (HMS). The area of application of the Convention is roughly the entire western and central Pacific Ocean (WCPO).¹ The Commission is the body charged with making the decisions needed to implement the provisions of the Convention. As a Contracting Party to the Convention, the United States is a member of the Commission.

The activity would implement certain provisions of the Commission's "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean" (CMM 2017-01), adopted in December 2017, and specific provisions of CMM 2016-02, "Conservation and Management Measures for Eastern High Seas Pocket Special Management Area," which the Commission adopted in December 2016. The rule also would make corrections to outdated cross references in existing regulatory text.

CMM 2017-01 is similar to WCPFC conservation and management measures for tropical tunas that NMFS has implemented in previous years, but includes some new provisions. The provisions of CMM 2017-01 that would be implemented in the rule include the following: (1) limits on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone (EEZ) and on the high seas between the latitudes of 20° N. and 20° S. in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention Area); (2) restrictions regarding the use fish aggregating devices (FADs) for U.S. purse seine fishing vessels; and (3) limits on the catches of bigeye tuna by U.S. longline vessels.

The limits on U.S. purse seine fishing effort detailed in CMM 2017-01 are similar to limits in previous WCPFC decisions and implemented by NMFS. The limits are 558 fishing days in the U.S. exclusive economic zone (EEZ) and 1,270 fishing days on the high seas in the area of

¹ The exact boundaries of the Convention Area are provided in the Convention, which is available, along with a map of the Convention Area, at <http://www.wcpfc.int/key-documents/convention-text>

application of the Convention between the latitudes of 20° N. and 20° S. for each of the calendar years 2018-2020. However, CMM 2017-01 also includes a new provision that would apply in 2018 only that allows the United States to transfer 100 fishing days from its limit in the U.S. EEZ to its limit on the high seas. If the U.S. EEZ limit is reached by October 1, 2018, the U.S. EEZ limit will also be increased by 100 fishing days, with the expectation that the catch taken by U.S. vessels and landed in American Samoa for the American Samoa canneries is no less than the volume landed in 2017 increased by 3,500 short tonnes. This new provision was included to alleviate the economic hardship faced by American Samoa and its canneries when U.S. purse seine fishing limits are reached, resulting in fishery closures.

The rule would establish a limit of 1,370 fishing days on the high seas and a separate limit of 458 fishing days in the U.S. EEZ. The proposed rule also would establish a mechanism to provide for adding 100 fishing days to the limit in the U.S. EEZ if the U.S. EEZ limit is reached.

CMM 2017-01 includes several provisions regarding FADs. The first provision is the same as in previous years' CMMs and requires that U.S. purse seine vessels be prohibited from fishing on FADs in the Convention Area between the latitudes of 20° N. and 20° S. from July 1 through September 30 of 2018. The second provision requires the United States to establish an additional consecutive two-month FAD prohibition period on the high seas in the Convention Area in 2018, in either April and May or November and December. CMM 2017-01 also includes a provision requiring that each U.S. purse seine vessel have no more than 350 drifting FADs with activated instrumented buoys deployed at sea in the Convention Area at any one time, which would be implemented in the proposed rule.

Under CMM 2017-01, the U.S. longline bigeye tuna catch limit is 3,554 metric tons (mt) for 2018. This is the same limit provided to the U.S. longline fisheries in 2016 in the previous CMM for tropical tunas. The rule would include implementation of this limit.

CMM 2016-02 includes provisions that require U.S. vessels used to fish for highly migratory species to be prohibited from transshipping catch in a particular area of the high seas (the Eastern High Seas Special Management Area or EHSSMA) and removes existing reporting requirements for vessels transiting the EHSSMA, which would be implemented in the proposed rule.

Expected coastal effects: The proposed requirement to prohibit transshipping catch in the EHSSMA would not be expected to affect the fishing patterns and practices of the U.S. fleets operating in the area, as transshipments currently generally do not take place in that area. Thus, no coastal effects are expected from implementation of that requirement. The administrative changes under the proposed action – the removal of existing reporting requirements for vessels transiting the EHSSMA and the corrections to regulatory cross references – would similarly not be expected to affect coastal areas.

The U.S. WCPO purse seine fishery operates exclusively in the tropics, generally within 10° of the equator. The U.S. WCPO longline fishery operates far from Guam. Therefore, no direct effects in Guam's coastal zone management area would be expected from the proposed action.

However, the implementation of the purse seine and longline elements of CMM 2017-01 might have indirect effects on WCPO stocks of the target species in the purse seine and longline

fisheries, skipjack tuna, yellowfin tuna, and bigeye tuna, as well as on stocks of fish and non-fish species caught incidentally in the two fisheries. Overall, the possible reduction in longline fishing effort from implementation of the bigeye tuna catch limit could cause a reduction in the fishing mortality rates of these stocks and consequent increases in the stocks' sizes. To the extent the stocks occur in Guam's coastal zone, this could conceivably lead to greater abundance of these stocks in Guam's coastal zone. The FAD restrictions and consequent shift to unassociated sets similarly would be expected to decrease the fishing mortality rates of WCPO bigeye tuna and stocks of non-target species. 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 recent 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, so it is conceivable that they could counter those of any decrease in purse seine fishing effort. In addition, the possible reduction in fishing effort from the fishing effort limits by the U.S. WCPO purse seine fleet, might have some minor indirect effects on WCPO stocks of skipjack tuna and yellowfin tuna, as well as of incidentally caught species, including bigeye tuna. To the extent these stocks occur in Guam's coastal zone, the action could, through the possible reduction in fishing effort, cause a reduction in the fishing mortality rates of these stocks and conceivably lead to greater abundance of these stocks in Guam's coastal zone.

In any case, because any effects of the action on fishing mortality rates would be small compared to the stocks' total fishing mortality rates, any effects on stocks sizes and abundance in Guam's coastal zone would be small. If similar restrictions are implemented in the future, and if other member nations of the Commission impose similar restrictions in their purse seine and longline fisheries, there could be greater effects on the sizes of WCPO stocks. To the extent the stocks occur in Guam's coastal zone, similar effects on the abundance of the affected species in Guam's coastal zone could occur.

Consistency evaluation: The policies and objectives of Guam's Coastal Zone Management Program, as set forth in Guam Land-Use Policies, Exec. Order 78-37 (Nov. 15, 1978), promote the sustainable development and use of marine and coastal resources. As discussed above, the activity proposed by NMFS would not cause any direct effects to Guam's coastal zone management area. The underlying objective of the proposed activity is to conserve WCPO stocks of three tropical tuna species and implement other WCPFC conservation and management measures. It would be implemented as part of an international agreement that all the fishing and coastal nations that are parties to the Commission are obligated to implement. That objective, as well as the small expected reductions in fishing mortality of stocks exploited in the U.S. purse seine and longline fisheries, is in line with the policies and objectives of Guam's Coastal Zone Management Program, particularly those related to the management of marine resources. Thus, NMFS has determined that the proposed activity would be consistent to the maximum extent practicable with the enforceable policies and objectives of Guam's Coastal Zone Management Program.