



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Pacific Islands Regional Office
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August 2, 2021

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

SUBJECT: Federal Consistency Determination; Proposed Rule for Fish Aggregating Design Requirements in Purse Seine Fisheries, IMO Number Requirements and Bycatch Restrictions (RIN 0648-BI79)

Dear Mr. Reyes:

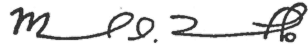
The National Marine Fisheries Service (NMFS) proposes to issue a rule to carry out the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). This action would implement specific provisions of four recent WCPFC decisions (CMM 2018-01, Conservation and Management Measure for Bigeye, Yellowfin and Skipjack; CMM 2018-06, Conservation and Management Measure for WCPFC Record of Fishing Vessels and Authorisation to Fish; CMM 2019-04, Conservation and Management Measure for Sharks; and CMM 2019-05, Conservation and Management Measure on Mobulid Rays).

Pursuant to the Coastal Zone Management Act of 1972, as amended (CZMA; 16 U.S.C. 1451 *et seq.*), 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 the 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. In accordance with 15 CFR 930.41, NOAA may presume concurrence if we do not receive your response within 60 days of Guam's receipt of our consistency determination. Please contact Emily Crigler (808-725-5036 or emily.crigler@noaa.gov) if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "M. D. Tosatto".

Michael D. Tosatto
Regional Administrator

Enclosure

cc: Julian Janssen, Guam Coastal Management Program
Kristen Placek, Pacific Islands Section, 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 the Guam Coastal Zone Management Program

Description of proposed activity: NMFS proposes to issue a rule 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 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 As a Contracting Party to the Convention, the United States is a member of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (hereafter WCPFC or Commission). The Commission is the body charged with making the decisions needed to implement the provisions of the Convention.

The proposed rule would implement specific provisions of four recent WCPFC decisions (CMM 2018-01, Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna; CMM 2018-06, Conservation and Management Measure for WCPFC Record of Fishing Vessels and Authorisation to Fish; CMM 2019-04, Conservation and Management Measure for Sharks; and CMM 2019-05, Conservation and Management Measure on Mobulid Rays).

The first decision, Conservation and Management Measure (CMM) 2018-01, “Conservation and Management Measure for Bigeye, Yellowfin, and Skipjack Tuna in the Western and Central Pacific Ocean,” was adopted by the Commission at its fifteenth regular annual session, in December 2018. CMM 2018–01² is the most recent in a series of CMMs for the management of tropical tuna stocks under the purview of the Commission. CMM 2018–01 is similar in many respects to its predecessor WCPFC conservation and management measures for tropical tunas, and NMFS has already implemented most provisions of CMM 2018–01 through prior rulemaking. The proposed rule would implement the provisions of CMM 2018-01 regarding non-entangling fish aggregating device (FAD) design requirements for purse seine fishing vessels.

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>

² The measures set out in CMM 2018-01 continue to be in force as CMM 2020-01 until February 15, 2022.

The second decision, CMM 2018-06, “Conservation and Management Measure for WCPFC Record of Fishing Vessels and Authorisation to Fish,” includes an amendment that expands the requirement to obtain an IMO number to smaller vessels used for commercial fishing for HMS in the Convention Area. The CMM states that effective April 1, 2020, members “shall ensure that all their motorized inboard fishing vessels of less than 100 GRT [gross registered tonnage] (or 100 GRT) down to a size of 12 meters in length overall (LOA), authorized to be used for fishing in the Convention Area beyond the flag [members’] area of national jurisdiction have an IMO” number issued.³ The existing WCPFC requirement to obtain an IMO number, implemented by NMFS, applies to vessels that are at least 100 GRT (see 50 CFR 300.217(c)). NMFS has established regulations through a prior rulemaking which requires vessels that are at least 100 GRT to obtain an IMO number (see 50 CFR 300.217(c)). The proposed rule would implement the updated provisions in CMM 2018-06 by revising the regulations at 50 CFR 300.217 (c) to include vessels less than 100 GRT down to a size of 12 meters in LOA.

The third decision, CMM 2019-04, “Conservation and Management Measure for Sharks,” combines and replaces five management measures related to sharks that had previously been adopted by the Commission (CMM 2010-07, “Conservation and Management Measure for Sharks”; CMM 2011-04, “Conservation and Management Measure for Oceanic Whitetip Sharks”; CMM 2012-04, “Conservation and Management Measure on the Protection of Whale Sharks from Purse Seine Operations”; CMM 2013-08, “Conservation and Management Measure for Silky Sharks”; and CMM 2014-05, “Conservation and Management Measure for Sharks”). The measure and all of its provisions become effective November 1, 2020. Most of the provisions of CMM 2019-04 have already been promulgated through existing U.S. regulations (50 CFR 300.226; 50 CFR 300.223(g) and (h)), which implemented prior WCPFC decisions. However, there are two new provisions in the measure. The regulations at 50 CFR 300.226 prohibit the retention, transshipment, storage, or landing of the oceanic whitetip shark (*Carcharhinus longimanus*) and the silky shark (*Carcharhinus falciformis*), and require the release of oceanic whitetip shark and silky shark as soon as possible after the shark is caught and brought alongside the vessel. CMM 2019-04 includes an amendment that would allow for an exemption for purse seine vessels in cases where an oceanic whitetip shark or silky shark are not seen during fishing operations and are delivered into the vessel hold. CMM 2019-04 also includes an amendment that requires that sharks be hauled alongside the vessel before being cut free in order to facilitate species identification. However, the provision only applies when an observer or electronic monitoring camera is present. The proposed rule would implement these two provisions of CMM 2019-04.

The fourth decision, CMM 2019-05, “Conservation and Management Measure on Mobulid Rays Caught in Association with Fisheries in the WCPFC Convention Area,” was adopted by the Commission at its sixteenth regular annual session in December 2019. The main objective of CMM 2019-05 is to ensure the conservation of mobulid rays (*i.e.*, the family Mobulidae, which includes manta rays and devil rays (*Mobula spp.*)) by reducing incidental take and mortalities in the Convention Area. The measure requires that members: 1) prohibit vessels from targeted

³ An IMO number is the unique number issued for a vessel under the ship identification number scheme established by the International Maritime Organization or, for vessels that are not strictly subject to that scheme, the unique number issued by the administrator of that scheme using the scheme's numbering format, sometimes known as a Lloyd's Register number or LR number.

fishing or intentional setting on mobulid rays in the Convention Area; 2) prohibit vessels from retaining on board, transshipping, or landing any part or whole carcass of mobulid rays caught in the Convention Area; 3) require vessels to promptly release mobulid rays, alive and unharmed, to the extent practical, as soon as possible and in a manner that will result in the least possible harm to the individuals captured; 4) provide for an exemption in cases where a mobulid ray not seen during fishing operations and is delivered into the vessel hold; and 5) require that vessels allow for observers to collect biological samples of mobulid rays that are dead at haul-back. This proposed rule would implement the four above listed provisions of CMM 2019-05.

The fisheries that could be affected by the proposed rule include the American Samoa-based purse seine fishery, Hawaii-based deep-set and shallow-set longline fisheries, American Samoa longline fishery, U.S. albacore troll fishery, and the tropical troll, hand line, and pole-and-line fisheries (in the vicinities of Hawaii, Guam, American Samoa, the CNMI, and the U.S. Pacific Remote Island Areas (PRIA) of Kingman Reef and Palmyra Atoll).

Expected coastal effects: The proposed rule would apply on the high seas and in all exclusive economic zones in the Convention Area. The IMO number requirement in the proposed rule may minimally affect reporting and recordkeeping activities of a small number of vessel owners and operators who do not currently have IMO numbers. Thus, this requirement is not expected to have any direct or indirect impacts on resources in the Guam coastal management zone and is not discussed further in this consistency determination.

The FAD element of the proposed rule would apply to purse seine vessels and could cause some minor changes in species composition of retained catch by purse seine vessels, if vessels choose to forego fishing on FADs because of the non-entangling FAD design requirements in the proposed rule. Any shift from using FADs to unassociated sets could lead to a greater proportion of the catch being composed of yellowfin tuna and a reduced proportion of the catch being composed of bigeye tuna. Thus, the overall fishing mortality on bigeye tuna could decrease and the overall fishing mortality on yellowfin tuna could increase if vessels chose to shift to unassociated sets. To the extent these stocks occur in the Guam coastal management zone, this element of the proposed rule could conceivably lead to a greater abundance of bigeye tuna, and a lower abundance of yellowfin tuna, in this zone. However, it is expected that most of the affected purse seine vessels are already implementing similar FAD design requirements. Similar requirements are in place in the eastern Pacific Ocean where many of these vessels fish. Similar requirements are also needed for vessels to be included on International Seafood Sustainability Foundation's ProActive Vessel Register; all affected purse seine vessels are on this register. Therefore, minimal if any changes to fishing behavior are expected from this element of the proposed rule, and any effects on fishing mortality rates would be expected to be minor. So, overall effects on the stocks of bigeye tuna and yellowfin tuna that occur in Guam's coastal zone and in turn, on Guam's coastal zone, would be expected to be minor.

The shark and ray elements of the proposed rule could cause some minor changes to the fishing activities of affected vessels, including vessels in fisheries that fish in or enter the U.S. EEZ surrounding Guam (Guam tropical troll, handline and pole-and-line fisheries) in terms of time spent fishing or other activities, if increased handling time is needed to release sharks or mobulid rays. For these elements, a reduction in fishing time could lead to reduced mortality of target stocks, and potentially fewer protected species interactions. However, overall, it is expected that

vessels would seek to make up for any lost fishing time, so these changes would be expected to be minor and any direct impact on resources in Guam's coastal zone is expected to be small to neutral.

Implementation of the proposed rule may reduce, directly or indirectly, adverse impacts on protected species such as sharks, rays and sea turtles that may occur in Guam's coastal management zone. Implementation of the non-entangling FAD requirements could be expected to reduce the risk of entanglements of sharks and turtles and implementation of the targeting and setting prohibition and no-retention and release requirements for mobulid rays could be expected to reduce the adverse impacts of fisheries on mobulid rays. The requirement to haul any incidentally caught shark alongside the vessel in order to improve species identification, could may also reduce adverse impacts to sharks. To the effect that vessels will be hauling sharks closer to the vessel before cutting them free, it could be expected that they would cut the line closer to the hook and in turn reduce the amount of trailing gear left on sharks that are being cut free, which has been shown to improve post-release survival rates in sharks. Thus, these elements of the rule could lead to some direct and indirect effects on resources that occur in Guam's coastal zone.

Consistency evaluation The policies and objectives of Guam's Coastal Zone Management Program, as set forth in 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 could lead to some minor effects on the stocks of bigeye tuna and yellowfin tuna that occur in Guam's coastal zone and in turn, on Guam's coastal zone. The proposed rule also may lead to reduced adverse impacts on some species of sharks, rays and sea turtles that might occur in Guam's coastal zone management area.

The proposed rule 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 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.