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## Finding of No Significant Impact

### **Bigeye Tuna Catch Limits in Longline Fisheries in 2009, 2010, and 2011**

This Finding of No Significant Impact (FONSI) was prepared according to the guidelines established in National Marine Fisheries Service (NMFS) Instruction 30-124-1 and the requirements set forth in the National Oceanic and Atmospheric Administration's Administrative Order (NAO 216-6, May 20, 1999). The FONSI is based on the Environmental Assessment (EA) and Supplemental EA prepared pursuant to the requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) to analyze the potential impacts on the human environment from promulgation of the rule (RIN 0648-AX59), "Bigeye Tuna Catch Limits in Longline Fisheries in 2009, 2010, and 2011."<sup>1</sup>

#### **Background**

The Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) adopted several Conservation and Management Measures (CMMs) at its Fifth Regular Session, in Busan, Republic of Korea, in December 2008. Conservation and Management Measures for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean (CMM 2008-01), sets forth provisions that seek to reduce fishing mortality on Western and Central Pacific Ocean (WCPO) bigeye tuna (*Thunnus obesus*) and control fishing mortality on WCPO yellowfin tuna (*Thunnus albacares*), including specific bigeye tuna catch limits for longline fisheries operating in the WCPFC's area of competence (hereafter "Convention Area") for 2009, 2010, and 2011. Pursuant to the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA; Pub. L. 109-479, Sec 501, et seq., and codified at 16 U.S.C. 6901 et seq.), NMFS is promulgating regulations to implement the WCPFC's bigeye tuna catch limit for U.S. longline fisheries.

The annual limit for the United States for each of the years 2009, 2010, and 2011, would be 3,763 metric tons (mt). Under CMM 2008-01, the fisheries of Participating Territories, including American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI), have separate bigeye tuna catch limits of 2000 mt for 2009-2011. However, if these Participating Territories are undertaking responsible development of their domestic fisheries, the bigeye tuna catch limits do not apply. Once NMFS determines that the limit is expected to be reached by a specific future date in the year, NMFS will publish a notice in the *Federal Register* announcing that specific restrictions will be effective on that specific future date until the end of the calendar year.

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<sup>1</sup> The EA also includes analysis of another action, "Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2009-2011 and Turtle Mitigation Requirements in Purse Seine Fisheries," which was part of a separate rule and has been addressed in a separate FONSI.



NMFS prepared an EA that analyzed three action alternatives for implementing the catch limit, as well as the No-Action or baseline alternative. In response to comments on the EA, NMFS prepared a Supplemental EA analyzing a new alternative, Alternative 5. The rule (hereafter “U.S. Longline Rule”) implements the catch limit in the manner specified by Alternative 5. Under Alternative 5, after the catch limit has been reached in a given calendar year, it would be prohibited to use a U.S. fishing vessel to retain on board, transship, or land bigeye tuna captured in the WCPFC’s area of competence by longline gear, subject to certain exceptions. Vessels with both Hawaii and American Samoa longline limited access permits (hereafter “dual permit vessels”) would be allowed to fish for bigeye tuna after the catch limit has been reached and to land their catch in Hawaii, as long as the catch is made outside the U.S. Exclusive Economic Zone (EEZ) of the Hawaiian Archipelago and landed by a U.S. fishing vessel operated in compliance with a permit issued under 50 CFR 660.707 or 665.21. Also, prior to the catch limit being reached, bigeye tuna caught by dual permit vessels in the Convention Area outside the EEZ surrounding the Hawaiian Archipelago would be attributed to American Samoa and would not be counted as part of the catch limit.

All of the action alternatives analyzed in the EA and the Supplemental EA would have similar and minor environmental impacts. However, the action alternatives analyzed in the EA would likely have slightly greater beneficial impacts than Alternative 5 on bigeye tuna and other living marine resources in the WCPO. NMFS prefers Alternative 5 over the other action alternatives because the other alternatives would incur more severe adverse economic impacts.

### **Significance Analysis**

NAO 216-6 contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations for implementing NEPA at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant to making this FONSI and has been considered individually, as well as in combination with the others.

The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ’s context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

**Response:** No. The target species of the U.S. WCPO longline fisheries are bigeye tuna and swordfish (*Xiphias gladius*), with yellowfin tuna being an incidentally caught target species. As stated in Section 4.1.2 of the Supplemental EA, implementation of the U.S. Longline Rule would likely lead to some beneficial impact on the WCPO stocks of bigeye tuna and yellowfin tuna by reducing the fishing mortality on the stocks once the catch limit is reached. However, these beneficial effects would be relatively small, because: (1) the limit would be in effect for only three years, after which fishing rates and fishing mortality rates contributed by the U.S. longline fisheries on the stock would be expected to rebound to the levels under No-Action; (2) after the limit is reached, all of the longline vessels in the fleet could transfer their effort to other areas, such as the Eastern Pacific Ocean (EPO), or to other species, mitigating any diminishing effect of the prohibition on fishing mortality rates (as stated in Chapter 3, Section 3.4 of the original EA, the stock structure of bigeye tuna in the Pacific Ocean is not well known, but there is some degree of mixing between the EPO and the WCPO, so any fishing mortality in the EPO would likely affect the status of the stock in the WCPO and fishing for other species in the Convention Area would result in at least some bigeye tuna being incidentally caught); and (3) dual permit vessels could continue fishing for bigeye tuna in the Convention Area outside of the EEZ surrounding the Hawaiian Archipelago.

The U.S. Longline Rule could cause some transfer of effort to the shallow-set sector of the longline fisheries to target swordfish once the catch limit is reached. However, as stated in Chapter 3 of the EA, the stock status of swordfish is neither overfishing nor overfished, so it is unlikely that an increase of effort to the shallow-set sector would cause adverse impacts on the stock.

2) Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?

Response: No. Section 4.1.3 of the Supplemental EA discusses the potential impacts to secondary target species from the U.S. Longline Rule. Once the catch limit is reached in a given year, any transfer of fishing effort to other areas, such as the EPO, would be expected to result in catch of secondary target stocks that is similar to existing conditions. Should vessels cease fishing during a prohibition or closure period, effects to secondary target stocks would be beneficial.

The U.S. longline fleets that would be directly affected by the U.S. Longline Rule (the Hawaii and west coast-based fleets) do not currently target albacore (*Thunnus alalunga*), although the American Samoa fleet does. The stock status (with respect to the status determination criteria established under the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801, *et seq.*), and as determined by NMFS) of North Pacific albacore is currently unknown, while the stock status of South Pacific albacore is neither overfished nor subject to overfishing. The American Samoa fleet targets South Pacific albacore, while the Hawaii-based fleet does not target but takes some North Pacific albacore. Should the dual permit vessels shift their fishing effort to locations closer to American Samoa as a result of the rule, there could be some increased fishing effort towards targeting South Pacific albacore. Should vessels cease fishing as a result of the rule, effects to North Pacific albacore would likely be beneficial. The U.S. Longline Rule could cause vessels to shift their fishing effort from targeting bigeye tuna to targeting North Pacific albacore tuna. Due to the other opportunities available to affected vessels, any such shift to targeting albacore likely would be minor.

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under MSA and identified in Fishery Management Plans (FMPs)?

Response: No. As stated in Chapter 4, Section 4.1.4 of the Supplemental EA, the U.S. Longline Rule would not cause any adverse impacts to areas designated as EFH or Habitat Areas of Potential Concern under MSA provisions, or to ocean and coastal habitats. Any geographical shifts in fishing effort would be minor and would not be expected to affect these areas.

4) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: No. As indicated in the Supplemental EA in Section 4.1.1, the only identified potential impact to public health and safety from the U.S. Longline Rule would be from the “race to fish” effect that would be expected at the beginning of the calendar year (because the limit would be set on a calendar year basis) and in the time period between when the announcement of the prohibition is made and when the prohibition takes place. This “race to fish” effect could cause vessel operators to forego vessel maintenance or to fish in unsafe weather or ocean conditions in order to compete for their share of the limit. However, due to the limited time period that the prohibition would be in effect and the other opportunities available to the affected vessels, it is unlikely that any race to fish effect would be pronounced. Thus, substantial adverse impacts on public health or safety are not anticipated to result from promulgation of the rule.

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

Response: No. As stated in Section 4.1.4 of the Supplemental EA, the U.S. Longline Rule would not be expected to adversely affect species listed as endangered or threatened under the Endangered Species Act (ESA), their critical habitat or marine mammals. To the extent that there could be a slight reduction in fishing effort, any effects to listed species or critical habit of these species would be beneficial, since there would be a reduced risk of interaction with the protected resource. Moreover, the U.S. Longline Rule would not cause any impacts to ESA-listed threatened or endangered species that have not been addressed in prior or ongoing consultations.

NMFS has completed several previous ESA consultations for the U.S. longline fishery in the Convention Area. They are as follows:

(1) Biological Opinion on Adoption of (1) proposed Highly Migratory Species (HMS) FMP; (2) continued operation of HMS fishery vessels under permits pursuant to the High Seas Fishing Compliance Act; and (3) ESA regulation on the prohibition of shallow longline sets east of the 150° West longitude.

(2) Biological Opinion for the FMP for U.S. West Coast Fisheries for HMS and its effect on the endangered short-tailed albatross (*Phoebastria albatrus*) and the endangered brown pelican (*Pelecanus occidentalis*).

(3) Biological Opinion on continued authorization of the Hawaii-based pelagic, deep-set, tuna longline fishery based on the FMP for pelagic fisheries of the western Pacific region.

(4) Biological Opinion on management modifications for the Hawaii-based shallow-set longline swordfish fishery – implementation of Amendment 18 to the FMP for pelagic fisheries of the western Pacific region.

(5) Biological Opinion for the effects of the Hawaii-based domestic longline fleet on the short-tailed albatross (*Phoebastria albatrus*).<sup>2</sup>

As stated in Chapter 3 of the original EA, pursuant to the regulations implementing the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361, et seq.) at 50 CFR Part 229, the Hawaii longline fishery is classified as a Category I fishery. This means that the fishery has the potential for frequent incidental mortality and serious injury to marine mammals. However, it is unlikely that the proposed action would affect the number of interactions between the fishery and marine mammals. Any effects in terms of catches and fishing mortality rates to protected species from shifts in fishing effort from the action alternatives are expected to be small compared to, for example, typical year-to-year variations in catches among species driven by changing oceanic and economic conditions.

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: No. The purpose of the U.S. Longline Rule is to implement a catch limit to reduce fishing mortality on WCPO bigeye tuna. As discussed in Chapter 3, Section 3.5.2 of the EA, both adult bigeye tuna and adult yellowfin tuna are considered among the top predators of the tropical or warm pool marine

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<sup>2</sup> The Incidental Take Statement in this biological opinion expired on December 31, 2006; U.S. Fish and Wildlife Service and NMFS are currently consulting regarding impacts of the longline fishery to the short-tailed albatross and expect this consultation to be completed by the end of 2009.

ecosystem. Changes to WCPO stocks of these species could lead to trophic interactive effects, including increased competition for prey species with other top predators. Larval and juvenile bigeye tuna and yellowfin tuna are also sources 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. However, the overall effects from the U.S. Longline Rule on WCPO bigeye tuna and WCPO yellowfin tuna would be so minor, that any effects to ecosystem function and biodiversity would not be expected.

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: No. As discussed in Section 4.1.1 of the Supplemental EA, if and when the maximum allowable amount of bigeye tuna landings is reached in a given year, affected fishing businesses would be expected to cease fishing for the remainder of the calendar year or shift from deep-setting for bigeye tuna in the WCPO to the next best opportunity. Vessels with both Hawaii longline and American Samoa longline limited access permits would be able to continue to fish for bigeye tuna in the Convention Area outside of the EEZ surrounding the Hawaiian Archipelago and land their catch in Hawaii. Other opportunities for all affected vessels include shallow-setting in the Convention Area (i.e., for swordfish), deep-setting for bigeye tuna in other areas, specifically the EPO, deep-set longline fishing in the area for species other than bigeye tuna, and accepting transshipments of bigeye tuna from dual permit vessels and landing the catch in Hawaii. Engaging in those opportunities would require the affected fishing operations to absorb some additional costs, but the magnitude of those costs cannot be projected. Overall, the environmental effects stemming from those economic impacts would be minor.

8) Are the effects on the quality of the human environment likely to be highly controversial?

Response: No. The EA was issued in conjunction with the proposed U.S. Longline Rule and six comment letters were submitted during the comment period. Two of these comment letters raised substantive issues regarding the EA. Another comment letter raising issues regarding the EA was submitted during the comment period for the other rule analyzed in the EA (see footnote 1). Some of the comments suggested that the U.S. Longline Rule could have effects on the human environment that should be analyzed in an Environmental Impact Statement. The Supplemental EA analyzed the substantive issues of concern raised in the comments and includes detailed responses to each of the comments (see Chapter 5). As stated in Section 4.2 of the Supplemental EA, the environmental effects caused by the implementation of the U.S. Longline Rule would be minor.

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

Response: No. As described in Section 3.6.3 of the EA, there are several National Wildlife Refuges and National Monuments in the affected environment. However, as stated in Section 4.1.4 of the Supplemental EA, any geographical shifts in fishing effort caused by the U.S. Longline Rule would be minor and would not be expected to adversely affect those areas.

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: No. As stated throughout the EA and the Supplemental EA, although the magnitude of the effects on the human environment cannot be quantified with certainty, the types of effects and the direction of those effects can be predicted. The rule would implement the WCPFC's established catch limit for WCPO bigeye tuna for the years 2009-2011, which could cause some beneficial effects on the stocks. The rule could cause some shift in fishing effort from targeting bigeye tuna in the WCPO, which

could cause effects to other fish stocks in both the WCPO and EPO. Such shifts in fishing effort could also cause effects to protected resources, but these effects would be minor, since the shift in fishing effort would likely be less than that caused by typical year-to-year variations in catches among species driven by changing oceanic and economic conditions. Moreover, the duration of the rule would be limited to three years. Thus, the overall direct and indirect impacts from implementation of the rule under any of the action alternatives would be minor.

In terms of cumulative effects, the effects of the U.S. Longline Rule in combination with the effects of similar actions taken by other WCPFC members, as well as possible future actions to implement any future WCPFC decisions with respect to bigeye tuna, could have beneficial effects on the stocks. These effects would be greater than if the proposed U.S. Longline Rule were implemented in isolation.

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: No. As discussed in Section 4.1.7 of the Supplemental EA, the cumulative, or additive, impacts on the affected environment from the U.S. Longline Rule, other present actions, and all reasonably foreseeable future actions would likely be beneficial. The objective of the U.S. Longline Rule and some of the other identified actions that could affect the affected environment is to implement conservation and management measures to help sustain the resources in the affected environment and maintain fishing activities for the long term. However, any beneficial effects could be counteracted by changes in ocean conditions, including those caused by climate change, which could lead to adverse effects on resources in the affected environment, as well as potential adverse effects caused by some reasonably foreseeable future actions, such as changes to current fishing operations from the activities of fishermen. Any such adverse effects are difficult to quantify and would be counteracted by the actions of fishery managers. Thus, the overall cumulative impacts are not expected to be significant or adverse.

12) Is the proposed action likely 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. Items eligible for listing or listed in the National Register of Historic Places or significant scientific, cultural or historical resources are not located in the affected environment, and thus, would not be affected by the implementation of the U.S. Longline Rule.

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

Response: No. The U.S. Longline Rule would implement a specific catch limit for bigeye tuna in the Convention Area. Vessels affected by the catch limit may change their current fishing practices to some degree, as discussed in Section 4.1 of the Supplemental EA, but these changes would not lead to the introduction or spread of a nonindigenous species.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Response: No. As stated in Chapter 1 of the EA and Chapter 1 of the Supplemental EA, the purpose of the U.S. Longline Rule is for NMFS to ensure the timely implementation of the United States of the bigeye tuna catch limit established by the WCPFC in CMM 2008-01. The need for the rule is to satisfy the international obligations of the United States, pursuant to the WCPFCIA, and to make effective a CMM provision that requires immediate implementation. Thus, the rule 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.

15) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: No. As stated in the response to #14, the purpose of the rule is to implement a specific catch limit and the need for the rule is to satisfy the international obligations of the United States as a member of the WCPFC. As such, the rule would not be expected to violate any laws or requirements imposed for the protection of the environment.

16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: No. See the response to #11 above for a discussion of cumulative effects. Moreover, as stated in Section 4.1.7 of the Supplemental EA, the U.S. Longline Rule itself would provide a small, beneficial contribution to the cumulative environmental impacts experienced by the affected environment.

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#### **DETERMINATION**

In view of the information presented in this document and the analysis contained in the supporting EA and Supplemental EA prepared for the rule, "Bigeye Tuna Catch Limits in Longline Fisheries in 2009, 2010, and 2011," it is hereby determined that the proposed action will not significantly impact the quality of the human environment as described above and in the supporting EA and Supplemental EA. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.



Regional Administrator  
Pacific Islands Regional Office

OCT 30 2009

Date