



**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL MARINE FISHERIES SERVICE**  
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March 6, 2024

Mr. Richard V. Salas, Director  
Division of Coastal Resources Management  
CNMI Bureau of Environmental and Coastal Quality  
P.O. Box 501304  
Saipan, MP 96950

**SUBJECT:** Federal Consistency Determination; Proposed Rule for Western and Central Pacific Fisheries for Highly Migratory Species; Changes to Purse Seine Fish Aggregating Device Closure Periods (RIN 0648-BM86)

Dear Mr. Salas:

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 amend current restrictions on the use of fish aggregating devices by U.S. purse seine vessels.

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 the Commonwealth of Northern Mariana Island'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. If no response is received within 60 days of receipt, NMFS may presume concurrence with this determination in accordance with 15 CFR 930.41. Please contact Rini Ghosh (808-725-5033) if you have any questions or need any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sarah Malloy".

Sarah Malloy  
Acting Regional Administrator

Enclosure

cc: Arthur Charfourous, CNMI Bureau of Environmental and Coastal Quality  
Frederick Tucher, NOAA Office of General Counsel  
Kristen Placek, 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 Commonwealth of the Northern Mariana Islands (CNMI) 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).<sup>1</sup> 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 2023-01), adopted in December 2023. CMM 2023-01 shortens the duration of fish aggregating device (FAD) closure periods for the U.S. purse seine fishery.

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 proposed 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.

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<sup>1</sup> 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>.

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 had determined earlier that implementing the two-month additional FAD prohibition period in November and December would be more cost-effective than implementing the prohibition period in April and May. 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 proposed rule would implement the additional one-month high seas FAD prohibition period in December 2024 and in future calendar years.

**Expected coastal effects:** The U.S. WCPO purse seine fishery operates exclusively in the tropics, generally within 10° of the equator. Therefore, no direct effects in CNMI’s coastal zone management area would be expected from the proposed action.

However, the implementation of the reduced FAD closure periods could have some indirect effects on the target species in the purse seine fishery – skipjack tuna and yellowfin tuna – as well as bigeye tuna and on stocks of fish and non-fish species caught incidentally in the purse seine fishery. According to the most recent fishery stock status update, as of December 31, 2023, the stocks of skipjack tuna, yellowfin tuna, and bigeye tuna in the WCPO were not overfished or experiencing overfishing (NMFS 2023). The reduced time period for the FAD restrictions and consequent reduced shift to unassociated sets would be expected to increase 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 somewhat sensitive to a shift to unassociated sets, and while projections indicate this stock is more likely to decrease in size than increase, it is believed that this is more due to the effects of increased impacts of the domestic fisheries of the Philippines and Indonesia (SPC 2023). The effects of the FAD restrictions for WCPO skipjack tuna are not known.

To the extent these stocks occur in CNMI’s coastal zone, the action could, through the possible increase in the fishing mortality rates of these stocks conceivably lead to minor decrease in abundance of these stocks in CNMI’s coastal zone. 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).

Thus, 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 CNMI’s coastal zone would be small.

**Consistency evaluation:** The policies and objectives of the CNMI’s Coastal Zone Management Program, as set forth in the Coastal Resources Management Act of 1983 (Pub. L. No. 3-47, Third Northern Marianas Commonwealth Legislature, 1982), 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 the CNMI'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 is in line with the policies and objectives of the CNMI'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 the CNMI's Coastal Zone Management Program.

### References

NMFS (National Marine Fisheries Service). 2023. Fishery Stock Status Updates. Available at: <<https://www.fisheries.noaa.gov/national/population-assessments/fishery-stock-status-updates>>.

SPC (Secretariat of the Pacific Community). 2023. Results of Analysis Requested by TTMW4 and Summary of the Results of the Analysis Requested by TTMW3. Secretariat of the Pacific Community Oceanic Fisheries Program. WCPFC20-23-16\_Rev1. Raratonga, Cook Islands, December 4-8, 2023. Available at: <<https://meetings.wcpfc.int/node/21249>>