



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
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August 5, 2020

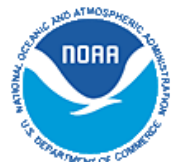
Ms. Janice Castro
Division of Coastal Resources Management
CNMI Bureau of Environmental and Coastal Quality
P.O. Box 501304
Saipan, MP 96950

SUBJECT: Federal Consistency Determination; Proposed Rule for Restrictions on Fishing by U.S. Commercial Fishing Vessels in Proximity to Data Buoys (RIN 0648-BA84)

Dear Ms. Castro:

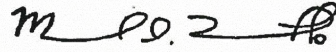
The National Marine Fisheries Service (NMFS) proposes to issue a rule to carry out the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. This action would implement a conservation and management measure to provide protection for data buoys in the waters of the Commission's area of competence (Convention Area) from commercial fishing activities.

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 Commonwealth of the 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. In accordance with 15 CFR 930.41, NOAA may presume concurrence if we do not receive your response within 60 days of CNMI's receipt of our consistency determination. Please contact Emily Reynolds (808-725-5039) 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: Arthur Charfauros, Division of Coastal Resources Management
Elena Onaga, Deputy Section Chief, 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 Commonwealth of the Northern Marianas Islands' (CNMI) 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 Commission). The WCPFC is the body charged with making the decisions needed to implement the provisions of the Convention.

The proposed activity would implement certain provisions of the Commission's "Conservation and Management Measure Prohibiting Fishing on Data Buoys" (CMM 2009-05), adopted in December 2009, which provides protection for data buoys in the waters of the Commission's area of competence (Convention Area) from commercial fishing activities.

CMM 2009-05 was developed to address concerns of the United States and other Commission members that vandalism and damage to data buoys results in a loss of critical ocean observations data used for weather forecasting, for the study of marine conditions, for tsunami warnings, and for supporting search and rescue efforts at sea, and that Commission members expend considerable time and resources to locate, replace and repair data buoys damaged or lost by fishing activities or vandalism.

CMM 2009-05 defines data buoys as "floating devices, either drifting or anchored, that are deployed by governmental or recognized scientific organizations or entities for the purpose of electronically collecting and measuring environmental data, and not for the purpose of fishing activities."

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>

The provisions of CMM 2009-05 for U.S. commercial fishing vessels fishing for HMS in the Convention Area that would be implemented in the proposed rule include the following:

CCMs² shall prohibit their fishing vessels from fishing within one nautical mile of or interacting with a data buoy in the high seas of the Convention Area, which includes, but is not limited to, encircling the buoy with fishing gear; tying up to or attaching the vessel, or any fishing gear, part or portion of the vessel, to a data buoy or its mooring; or cutting a data buoy anchor line.

CCMs shall prohibit their fishing vessels from taking on board a data buoy unless specifically authorized or requested to do so by the Member or owner responsible for that buoy.

CCMs shall require their fishing vessels that become entangled with a data buoy to remove the entangled fishing gear with as little damage to the data buoy as possible.

The first provision above would apply to the high seas in the Convention Area, whereas the latter two would apply to the U.S. EEZ and the high seas in the Convention Area.

In addition, we are considering implementing in the proposed rule the following provision of the CMM:

CCMs are encouraged to require their fishing vessels to report to them all entanglements and provide the date, location and nature of the entanglement, along with any identifying information contained on the data buoy. CCMs shall notify the Secretariat of all such reports.

The CMM also provides that scientific research programs notified to and authorized by the Commission may operate fishing vessels within one nautical mile of a data buoy while fishing for HMS on the high seas in the Convention Area so long as they do not interact with the data buoy.

The fisheries that could be affected by the proposed rule include the U.S. purse seine fishery in the WCPO, the Hawaii deep-set and shallow-set longline fisheries, the American Samoa longline fishery, the U.S. albacore troll fishery operating in the WCPO, the U.S. tropical troll and handline fisheries which include the Hawaii troll and handline fisheries, the Hawaii pole-and-line fishery, and the American Samoa, Guam, and Commonwealth of the Northern Mariana Islands (CNMI) troll fisheries.

Expected coastal effects: The proposed rule would apply to data buoys on the high seas and/or in the U.S. EEZ, and thus would not directly affect CNMI's coastal zone. Therefore, no direct effects in CNMI's coastal zone management area would be expected from the proposed action. However, the implementation of the Commission's management measures in the Convention Area might have some effects on the WCPO stocks of the target species of the U.S. fleets that operate in the Convention Area – the U.S. longline fisheries, U.S. albacore troll fishery, the U.S.

² WCPFC Members, Participating Territories, and Cooperating Non-members, collectively referred to as "CCMs".

WCPO purse seine fleet, and the U.S. tropical troll and handline fleets. These fleets primarily target skipjack tuna, yellowfin tuna, bigeye tuna, or albacore tuna.

In particular, the U.S. purse seine fleet may fish near fish aggregating devices (FADs) to target these stocks, therefore any shift from using data buoys as FADs to unassociated sets would 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 with the overall effect on skipjack tuna difficult to predict. Thus, the overall fishing mortality on bigeye tuna could decrease and the overall fishing mortality on yellowfin tuna could increase. As juvenile tunas are associated with FADs, implementation of the proposed action could lead to some beneficial effects on stocks by reducing fishing mortality on juvenile tunas; however, for yellowfin tuna, any such beneficial effects would be counteracted by increased fishing mortality on adults.

There could also be some effects on stocks of fish and non-fish species caught incidentally by these fleets. For example, some studies suggest that seabirds, sea turtles, marine mammals, and sharks aggregate near FADs (Jaquemet et al. 2004³, Molony 2005⁴). Therefore, implementation of the proposed rule could lead to a reduced risk of interactions with fish and non-fish species caught incidentally by these fleets. These effects could occur if the change in management measures affect the fishing activity of the fleets, which is difficult to predict with certainty. Additionally, as stated above, the U.S. purse seine fleet that uses FADs for fishing purposes may modify its fishing behavior due to this proposed rule; fewer available FADs for fishing could lead to reduced mortality of target stocks and reduced potential for interactions with other species.

If the change in management measures leads to a reduction in fishing activity, to the extent the stocks occur in CNMI's coastal zone, the action could conceivably lead to greater abundance of these stocks in CNMI's coastal zone. If the change in management measures leads to an increase in fishing activity, to the extent these stocks occur in CNMI's coastal zone, the action could lead to a reduction of abundance of these stocks in CNMI's coastal zone.

In any case, any effects of the action on the status of the stocks would be small compared to the total effects on the stocks from other factors. Many other factors affect these stocks (fishing activities by non-U.S. fleets, oceanographic conditions, etc.). Thus, the effects on stocks sizes and abundance in CNMI's coastal zone from the proposed action would be small.

In addition, for all of the fleets that use data buoys FADs— including the vessels in the tropical troll, handline, and Hawaii pole-and-line fisheries that do not fish on the high seas – the proposed action would require owners and operators to ensure the prompt removal of any entangled fishing vessel, fishing gear, equipment, or associated watercraft with as little damage as possible

³ Jaquemet, S., M. Le Corre, and H. Weimerskirch. 2004. Seabird community structure in a coastal tropical environment: importance of natural factors and fish aggregating devices (FADs). *Marine Ecology Progress Series* 268: 281–292

⁴ Molony, B. 2005. Estimates of the mortality of non-target species with an initial focus on seabirds, turtles, and sharks. WCPFC Report SC1 EB WP-1. Pohnpei, Federated States of Micronesia, Western and Central Pacific Fisheries Commission.

to the data buoy and its mooring and anchor lines, and could require additional precautions to be taken when encountering data buoys anywhere in the Convention Area. The operator and crew of any vessel that has gear that becomes entangled with a data buoy would need to make sure to disentangle the gear carefully, in order to cause as little damage to the data buoys as possible. In such instances, this could decrease the time spent fishing, consequently potentially decreasing the amount of target and non-target species caught. Thus, the proposed action could lead to some beneficial direct and indirect effects on the target and non-target stocks; as less fishing could lead to less overall fishing mortality which could contribute to the status of the stocks over time. However, given that non-data buoy FADs would still be used, and that increased handling time for tangled gear would be unlikely to substantially affect the fishing patterns and practices of the fleets, any effects to target or non-target species from the proposed action and any resulting effects to CNMI's coastal zone would be expected to be minor.

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 CNMI's coastal zone management area. Indirect effects, summarized above, may lead to less overall fishing mortality, which could contribute to the status of stocks over time. The underlying objective of the proposed activity is to implement conservation and management measures associated with the protection of data buoys. 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 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 CNMI's coastal zone management program.