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**National Oceanic and Atmospheric Administration**  
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**JUL 26 2016**

Ms. Lola Leon Guerrero, Acting Administrator  
Guam Coastal Management Program  
Bureau of Statistics & Plans  
PO Box 2950  
Hagatna, GU 96932

Dear Ms. Guerrero:

**SUBJECT:** Federal Consistency Determination; Proposed Rule for Western and Central Pacific Fisheries for Highly Migratory Species; Treatment of U.S. Purse Seine Fishing with Respect to U.S. Territories (RIN 0648-BF41)

The National Marine Fisheries Service (NMFS) is considering 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. The proposed rule relates to the treatment of U.S.-flagged purse seine vessels and their fishing activities in regulations implementing decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, particularly with respect to whether they are considered part of a purse seine fishery of a U.S. territory.

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 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. Please contact Tom Graham (808-725-5032) if you have any questions or need any additional information.

Sincerely,

Michael D. Tosatto  
Regional Administrator

Enclosure



## **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 is considering whether to issue a rule that would affect the implementation of decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (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. Three U.S. territories participate in the Commission, American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), and Guam (Participating Territories).

The rule under consideration relates to the treatment of U.S.-flagged purse seine vessels and their fishing activities in regulations implementing decisions of the Commission, particularly with respect to whether they are considered part of a purse seine fishery of a U.S. territory. Currently, all purse seine fishing activity by U.S. fishing vessels in the Convention Area is considered part of the U.S. purse seine fishery for the purpose of reporting to the Commission and for the purpose of fishing effort limits established at 50 CFR 300.223(a). This rule would change that by providing that purse seine fishing activity that results in the catch being landed or transshipped ("offloaded") in a U.S. Participating Territory is part of the purse seine fishery of that territory, provided that none of the catch from the fishing trip is offloaded elsewhere.

NMFS would use the proposed fishery attribution criteria for general statistical and reporting purposes in the context of the Convention, such as for reporting fishery data to the Commission. Additionally, the new criteria would be applied to existing regulations that regulate the activities of U.S. purse seine fishing vessels—that is, existing regulations would be revised as needed to recognize the territories' purse seine fisheries and treat them in accordance with relevant Commission decisions. The only regulations that would need to be revised are the limits on purse seine fishing effort on the high seas and in the U.S. exclusive economic zone (EEZ) in the

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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>

Convention Area, in the area known as the Effort Limit Area for Purse Seine, or ELAPS (50 CFR 300.223(a)). Those limits implement provisions of the Commission's Conservation and Management Measure (CMM) 2015-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean," the latest in a series of CMMs devoted to the management of tropical tuna stocks. The 2016 ELAPS limit is 1,828 fishing days. Thus, under the rule, if a U.S.-flagged purse vessel offloads its catch from a given fishing trip in American Samoa, Guam, or the CNMI, none of the fishing effort on the high seas during that fishing trip would be counted against the 2016 ELAPS limit (but the fishing effort in the U.S. EEZ portion of the ELAPS would be counted against the limit).

The main direct effect of the rule is that it would make the 2016 ELAPS limit less constraining on U.S.-flagged fishing vessels, collectively and individually, so it would effectively allow more fishing effort on the high seas in 2016 than without the rule. The rule also would create an incentive for purse seine vessels to offload their catches in the U.S. Participating Territories. Currently, American Samoa is the only one of the three U.S. Participating Territories with fish processing facilities, so landings could be greater in American Samoa in 2016 than they would be without the rule. All three U.S. Participating Territories could be viable transshipment locations, so transshipments could be greater in all three territories in 2016 than they would be without the rule.

As NMFS indicated in the interim rule that established the 2016 ELAPS limit (published May 25, 2016; 81 FR 33147), there is a substantial likelihood that the limit will be reached before the end of 2016. This proposed rule could have a substantial relieving effect with respect to the 2016 ELAPS limit. First, it likely would delay the date at which the ELAPS limit is reached. Second, if and when it is reached, the proposed rule would allow U.S. purse seine vessels to continue to fish on the high seas, provided that they offload their catch in one of the U.S. Participating Territories. NMFS cannot predict exactly how purse seine vessels would behave in response to the rule, such how as much more fishing effort they would exert on the high seas or how many more port visits and offloadings they would make in American Samoa, Guam, or the CNMI in 2016.

**Expected coastal effects:** U.S.-flagged purse seine vessels in the WCPO operate exclusively in the tropics, generally within 10° of the equator, so no direct effects in Guam's coastal zone management area would be expected from the action. The rule is likely to result in greater fishing effort by the U.S.-flagged purse seine vessels on the high seas in the WCPO in 2016 than would occur without the rule. Some of the greater fishing effort on the high seas is likely to result from a shift in fishing effort from foreign waters, but some of it could reflect greater fishing effort in the WCPO as a whole. To the extent purse seine fishing effort in the WCPO in 2016 is greater under the rule than it would be without the rule, it might have some indirect effects on WCPO stocks of the target species of the purse seine fishery, skipjack tuna and yellowfin tuna, as well as of incidentally caught species, including bigeye tuna, which is subject to overfishing. The main purse seine control in place for WCPO bigeye tuna is a 2016 limit on the number of sets that may be made on fish aggregating devices (FADs), which would not be affected by this rule (see 50 CFR 300.223(b)). Because the vast majority of purse seine mortality of bigeye tuna occurs in FAD sets, as opposed to free-school or unassociated sets, any increase in fishing effort resulting from this rule would not be expected to affect the exploitation rate or

stock size of WCPO bigeye tuna. Any increase in fishing effort could affect the mortality rates of other stocks, such as skipjack tuna and yellowfin tuna in the WCPO, but any effects would not be expected to be substantial. Any impacts to stocks in the coastal zone are expected to be similar to impacts to the stocks as a whole. Because the rule could reduce the impact of the 2016 ELAPS limit, as well as create an incentive to offload fish in Guam, it could result in more port visits by U.S.-flagged purse seine vessels to Guam in 2016 than would occur without the rule. NMFS cannot predict the effects of the rule after 2016 because currently there are no NMFS regulations that would be affected by the rule after 2016, other than its statistical and reporting-to-Commission aspects. However, if the Commission adopts, and NMFS implements, measures for purse seine fisheries similar to those it has adopted in the past, the effects after 2016 could be similar to those described above for 2016.

**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 taken by NMFS would not cause any direct effects to Guam's coastal zone, and the possible indirect effects on fish stocks in the U.S. EEZ around Guam are not expected to be substantial. Accordingly, NMFS has determined that the activity would be consistent to the maximum extent practicable with the enforceable policies and objectives of Guam's coastal zone management program.