

**Finding of No Significant Impact
for Regulations Implementing Capacity Resolutions Adopted by the Inter-American
Tropical Tuna Commission and Vessel Assessment Resolutions Adopted by the Parties to
the Agreement on the International Dolphin Conservation Program**

National Marine Fisheries Service
January 5, 2005

NMFS prepared a draft Environmental Assessment (EA) for the proposed rule. The draft EA was available for public comment through November 29, 2004. NMFS did not receive any comments on the draft EA during the 30-day comment period. The EA prepared for the final regulations is largely unchanged from the draft EA.

National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations 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 a finding of no significant impact 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 be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action?

The proposed action is not expected to jeopardize the sustainability of any target species. The proposed action would be expected to limit to current levels or decrease the harvest of target tuna species by limiting the capacity of the U.S. tuna purse seine fleet operating in the eastern tropical Pacific Ocean (ETP). The action also proposes to ensure that fees to support an on-board observer program are paid on time. The observer program monitors the take of target species.

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

The proposed action is not expected to jeopardize the sustainability of any non-target species. The proposed action may have the effect of decreasing the incidental take of these species by limiting the capacity of the U.S. tuna purse seine fleet operating in the ETP below past levels. The action also proposes to ensure that fees to support an on-board observer program are paid on time. The observer program monitors the take of non-target species.

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

The proposed action is not expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat. The action proposes to limit the number of U.S. purse seine vessels operating in the ETP. Impacts to ocean and coastal habitats associated with the action would be expected to decrease as a result of this limitation.

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

The proposed action is not expected to have a substantial adverse impact on public health or safety. The proposed action is not expected to change current public health or safety conditions.

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

The proposed action is not expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species. The proposed action may have the effect of decreasing the incidental take of turtle species by limiting the capacity of the U.S. tuna purse seine fleet operating in the ETP below past levels. The proposed action does not restrict U.S. vessels from, or encourage them to, harvest tuna associated with dolphins. Currently, U.S. vessels in the fishery do not harvest tuna associated with dolphins. The action also proposes to ensure that fees to support an on-board observer program are paid on time. The observer program monitors the take of protected species in the fishery.

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

The proposed action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area. The action does not propose to change the way in which U.S. vessels currently fish. The proposed action would limit the capacity of the fleet operating in the ETP and may, as a result, limit any impacts on biodiversity and ecosystem function.

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

Significant natural or physical environmental effects are not expected to result from the proposed action. Further, significant social and economic impacts are not expected to result from natural or physical environmental effects or any aspect of the proposed action.

(8) To what degree are the effects on the quality of the human environment likely to be highly controversial?

In the past, actions related to dolphin mortality in the ETP tuna purse seine fishery have been highly controversial. However, this action does not propose to change, either by restricting or

facilitating the ability of U.S. vessels to harvest free swimming schools of tuna or tuna associated floating objects or dolphins. The proposed action would not change the way in which the U.S. fishery is executed. It would only restrict the aggregate active capacity of U.S. vessels that can participate in the fishery each year. Other aspects of the proposed action are not expected to be controversial.

(9) Can the proposed action be reasonably 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?

The proposed action is not expected to result in impacts to unique areas, such as those listed above.

(10) To what degree are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Any effects associated with the proposed action are relatively predictable and not highly uncertain. The United States pioneered the fishery, which is over 50 years old. The fishery has changed in several key respects over the years. However, in past 5 years the fishery has not changed substantially. The tuna market and political climate indicate that the current fishery will be maintained for the foreseeable future. Further, the proposed action is consistent with the recent level of interest by U.S. vessel owners in the fishery. Highly uncertain or unknown impacts are more likely to result from not implementing the proposed action, as not implementing internationally adopted resolutions would set a precedent of non-compliance for other nations.

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

The proposed action is not related to other actions with individually insignificant, but cumulatively significant impacts.

(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 historic resources?

The proposed action is not likely to impact anything listed in or eligible for listing in the National Register of Historic Places, expected to cause loss or destruction of significant scientific, cultural or historic resources.

(13) Can the proposed action be reasonably expected to result in the introduction or spread of a non-indigenous species?

The proposed action is not expected to result in the introduction or spread of a non-indigenous species.

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

The proposed action is not likely to establish a precedent for future actions with significant effects or represent a decision in principal about a future consideration.

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

The proposed action is not expected to threaten or violate Federal, State or local law or requirements imposed for the protection of the environment. The proposed action implements U.S. laws and includes prohibitions against actions that undermine or impede enforcement of those laws.

(16) Can the proposed action be reasonably expected to result in beneficial impacts, not otherwise identified and described above?

The proposed action is expected to result in the following beneficial impacts: improved enforcement of U.S. laws; greater consumer confidence related to tuna tracking procedural changes and market prohibitions against tuna labels referring to dolphins, porpoises or marine mammals that do not meet current dolphin-safe labeling requirements; and sustainability of target and non-target species as a result of implementing domestic fleet capacity limits.

DETERMINATION

In view of the information presented in this document and the analysis contained in the attached Environmental Assessment prepared for final regulations to implement resolutions adopted by the Inter-American Tropical Tuna Commission and the Parties to the Agreement on the International Dolphin Conservation Program, it is hereby determined that the final regulations will not significantly impact the quality of the human environment as described above and in the Environmental Assessment. In addition, all impacts to potentially affected areas, including national, regional and local, have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

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3/25/05
Date