



**Western
Pacific
Regional
Fishery
Management
Council**

July 2, 2009



Mr. Bill Robinson
Regional Administrator
NMFS Pacific Islands Regional Office
1601 Kapiolani Blvd., Suite 1200
Honolulu, Hawaii 96814-4700

Dear Bill:

Below are our comments on NMFS' proposed rule (74 FR 23965) and associated Environmental Assessment (EA) regarding the implementation of regulations needed to carry out U.S. obligations under the Western and Central Pacific Fisheries Commission (WCPFC) relating to: 1) authorization to fish, 2) vessel information, 3) vessel monitoring systems (VMS), 4) vessel observer program, 5) vessel identification, 6) purse seine transshipment restrictions, 7) reporting and recordkeeping, 8) compliance with laws of other nations, 9) facilitation of enforcement and inspection, and 10) confidentiality of information.

1. Authorization to fish

The proposed rule would require U.S. vessels fishing in the WCPFC area to obtain a WCPFC Area Endorsement from NMFS. This endorsement would be linked to the High Seas Fishing and Compliance Act (HSFCA) permit application. Similar to period of validity to the HSFCA permit, the WCPFC Area Endorsement would be valid for five years. Chapter 4 of the EA indicates that NMFS proposes to charge a fee of \$25 (or \$5 per year) for the WCPFC Area Endorsement. While \$25 is a small amount relative to vessel revenues, NMFS does not provide adequate reasoning of why or how this amount will recoup administrative costs, resulting in the perception of NMFS attempting to "nickel and dime" U.S. fishing vessels. NMFS should not charge any fees for WCPFC Area Endorsements, but if NMFS insists, then it should describe in the final rule or EA how the total amount of monies received from area endorsement applications would offset administrative costs.

2. Vessel information

Section 2.3 of the EA describes the new information that will be solicited from vessel owners. This includes information on: nationality of master; vessel communication types; type of fishing or method; carrying capacity, including freezer type, capacity and number, and fish hold capacity; and color photograph of vessel.

As there could be confusion on the units of measurements related to capacity as well as confusion on the level of detail of required information, NMFS should produce a comprehensive compliance guide for vessel owners to follow.

3. Vessel Monitoring System

The Council's VMS policy is clear that government funding should pay for VMS. As the proposed rule and EA indicate, 73 vessels (69 albacore and 2 western general longline permitted vessels) would have to buy, install, and maintain VMS units as well as pay for VMS transmission costs. This would cost approximately up to \$1,775 per year or \$7,100 over the course of four years, which is a VMS unit's general lifespan. It does not make sense to break out the VMS unit cost by year as the VMS unit itself costs approximately \$4,000. The EA does not describe if NMFS has pursued government funding to cover these costs for the 73 vessels affected by the rule. NMFS should find government funding to make this requirement equitable amongst fishery participants. Furthermore, the proposed rule would require albacore trolling vessels continue to transmit their VMS positions while fishing in the EPO. This seems particularly onerous and costly for this fleet, especially since the proposed rule is in response to WCPFC measures. The proposed rule would also require that vessel operators provide NMFS with a notice when they power down in port and shut off power supply to their VMS unit. Vessel operators would also have to inform NMFS that they have powered back on and that they are going on a fishing trip. As this not current practice, NMFS will need to develop a detailed outreach plan to inform fishery participants.

4. High Seas Boarding and Inspection

As mentioned in the EA, high seas boarding and inspection of US vessels will likely be rare. As required under WCPFC boarding and inspection procedures, the US government must be notified by the boarding nation prior to boarding a US vessel. In the case of such a boarding, NMFS or the USCG should establish and maintain communication with the US vessel during the boarding and inspection and also follow up with the vessel to ascertain if any problems occurred. NMFS should also provide guidelines for US vessel operators to follow in the event of a boarding on the high seas by WCPFC member nation.

5. Vessel observer program

The EA is unclear on why alternatives were not identified or considered for implementation of the WCPFC observer program. The VMS category considered alternatives that would trigger VMS requirements if certain temporal and spatial characteristics were met. However, similar alternatives were considered for the vessel observer program category. The EA does not provide any explanation on why NMFS has no discretion in implementing the WCPFC observer program. The observer requirement could be especially onerous for US albacore fishermen who fish on relatively small vessels, and no reason is provided for potentially requiring them to carry observers when they may not fishing in the Convention area. NMFS should include and analyze this alternative that would avoid this situation in the Final EA.

As observer costs in the Hawaii and American Samoa longline fisheries are paid for by NMFS, observer costs for the Western Pacific general longline permit vessels should also be paid for by NMFS.

6. Purse seine transshipment requirements

The proposed rule's prohibition to prohibit purse seine transshipments at sea is appropriate. However, NMFS should provide information on the impact of this requirement, if any, and also describe if the US fleet historically transshipped, including their locations, in past years.

7. Reporting and recordkeeping

In the proposed rule, NMFS states that any US commercial fishing vessel fishing for HMS anywhere in the Pacific Ocean would be required to submit catch and effort information to NMFS. The proposed rule goes on to say that the reporting requirements are already met by MSA, HSFCFA, Tuna Conventions Act, SPTA, US-Canada Albacore Treaty, and State regulations. NMFS indicates that this is applicable to 5,000 vessels but offers no detailed information in the proposed rule or EA to for the reader verify this. Furthermore, the data collection process is not discussed in detail in the proposed rule or EA on how NMFS is currently obtaining this important information.

8. Compliance with the laws of other nations

The proposed rule's requirement to comply with the laws other nations is appropriate. However, the EA does not provide any current or historical information on the number of US vessels that fish in the EEZs of other member nations. To get a better understanding on the issue, the Final EA should include this information.

9. Facilitation of enforcement and inspection

The proposed rule states that the operator of any US fishing vessel must accept and assist boarding and inspection by contracting parties of the WCPFC. As there are US vessels that have PRIA bottomfish (3), lobster (2), and troll (12) permits, NMFS should provide information to these vessel operators so that they are aware of potential boarding and inspection by non US parties. The final rule and Final EA should describe this outreach as well as the number and type of other US fishing vessels that could be subject to non-US boarding and inspection.

10. Confidentiality of information

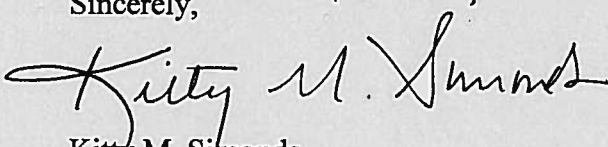
The proposed rule and the EA offer no details on how the proposed procedures vary or are consistent with current procedures, what specific procedures will be followed, or what specific information will be protected. Without this information, it is not possible to comment on this issue. All information submitted by or collected from vessel owners, operators, or crew must be treated as confidential business information and not released in any manner that reveals the identities, operations, or fishing locations of any individual vessel. Fishing operations, locations, and catches are considered to be proprietary business information and must be treated as such.

Furthermore, the EA should discuss the current status of agreements within the WCPFC with respect to confidential information.

Conclusion

Overall, the EA should be improved to discuss the impact of the “non-discretionary” obligations and hope NMFS considers does so in the Final EA. In addition, we strongly believe that NMFS should pay for the VMS and Observer costs for the two longline vessels operating out of CNMI as well as for the albacore troll fleet. Finally, Table 41 of the EA indicates that NMFS contacted the Council for information; however, neither myself nor my staff have record of this. Thank you for considering our comments.

Sincerely,

A handwritten signature in cursive script that reads "Kitty M. Simonds". The signature is written in dark ink and is positioned above the printed name and title.

Kitty M. Simonds
Executive Director