



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031125294-4091-02]

RIN 0648-XD238

Fisheries Off West Coast States; the Highly Migratory Species Fishery; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action; closure.

SUMMARY: We, NMFS, are immediately closing the Pacific loggerhead conservation area, prohibiting fishing with large mesh drift gillnet (DGN) gear (>14 in mesh) off the coast of southern California east of 120° West meridian through August 31, 2014. This prohibition is based on the Assistant Administrator for Fisheries' (AA) determination that El Niño conditions are occurring off the coast of southern California. This action protects Endangered Species Act (ESA) listed loggerhead sea turtles (*Caretta caretta*), specifically the endangered North Pacific Ocean Distinct Population Segment. Large mesh DGN fishing vessels must cease fishing east of 120° west on publication of this document.

DATES: Effective 12:01 am Pacific Daylight Time (PDT) [insert date of filing for public inspection with the OFFICE OF THE FEDERAL REGISTER] through 11:59 pm, August 31, 2014.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, West Coast Region, NMFS, (760) 431-9440, ext. 303; craig.heberer@noaa.gov.

SUPPLEMENTARY INFORMATION: The DGN fishery is managed under the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS) (50 CFR part 660, subpart K). The fishery occurs off the coast of California. Our regulations provide that “No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. meridian from June 1 through August 31 during a forecasted, or occurring, El Niño event off the coast of southern California.” 50 CFR 660.713(c)(2). This area, which falls within the southern California Bight (SCB), is referred to in the regulations as the Pacific loggerhead conservation area.

Under 50 CFR 660.713(c)(2)(ii), the AA is to make the determination that an El Niño event is forecasted or occurring off southern California, relying on information developed by NOAA offices such as the Climate Prediction Center (CPC) and the West Coast Office of the Coast Watch program. The AA is to use monthly sea surface temperature (SST) charts to determine whether there are warmer than normal SSTs off southern California “during the months prior to the closure months for years in which an El Niño event has been declared” by the CPC. The AA is also to specifically use SST data from the third and second months prior to the month of closure.

We published these regulations to protect ESA-listed loggerhead sea turtles in response to a reasonable and prudent alternative (RPA) included in our 2000 biological opinion on issuance of an incidental take permit under the Marine Mammal Protection Act. The consultation concluded that bycatch in the DGN fishery jeopardized the continued existence of the turtles and required the regulations to avoid jeopardy. We have not closed the Pacific loggerhead conservation area since the regulations were first published in 2003 because the AA has not determined El Niño conditions were occurring off the coast of southern California.

The CPC forecasts and declares when El Niño conditions exist based on conditions in equatorial waters, but does not forecast or declare when El Niño conditions exist off southern California. This year, based on monthly updates through July 10, 2014, the CPC has not declared an El Niño. The Coast Watch program publishes maps of SST off the California coast through the Environmental Research Division’s Data Access Program.

On May 27, 2014, a working group of staff, including sea turtle biologists and oceanographers, from the NMFS West Coast Region (Region) and Southwest Fisheries Science Center (SWFSC) held a teleconference to discuss whether El Niño conditions were likely off the southern California coast during June, July, or August 2014. On May 8, 2014, the CPC had issued an El Niño watch, which means that conditions are favorable for the development of El Niño within the next six months, and stated that the “chance of El Niño increases during the remainder of the year, exceeding 65% during summer.”

The working group also reviewed the SST anomalies in the SCB during March and April of 2014, relying on SST maps available through NOAA’s Coast Watch

Program (for details see <http://coastwatch.pfeg.noaa.gov/erddap/index.html>). These maps indicated that SSTs were above normal in southern California. At that time, the working group concluded that a determination of El Niño conditions off southern California was not warranted because the equatorial forecasts appeared to indicate El Niño conditions would not be occurring during June.

On July 3, 2014, the working group met again. The CPC El Niño watch remained in effect at that time and remains in effect as of July 10, 2014 (the most recent monthly El Niño forecast published). Although the CPC has not yet declared an El Niño, the workgroup concluded that El Niño conditions are present off the coast of southern California based on SSTs that are warmer than normal during the third and second months prior to the month of the closure, consistent with 50 CFR 660.713(c)(2)(ii).

In addition, the working group noted the presence of loggerhead sea turtles in the SCB, including sightings off Los Angeles County and two stranded loggerhead sea turtles off San Diego County which had been reported by the NMFS stranding network. The working group also noted the sightings of other hard shelled turtles and other rarely seen species (e.g., sei whale and Brydes whale) in the SCB. This information further indicates El Niño conditions are occurring off the coast of southern California and also raises concerns that the DGN fishery would encounter loggerhead sea turtles.

Although the CPC has not declared an El Niño event is occurring, we find such a declaration is not a necessary condition for determining that El Niño conditions are occurring off the southern California coast. The regulations require us to rely on information developed by NOAA offices which monitor El Niño events in making our determination. On July 10, 2014, the CPC reported that “the chance of El Niño is about 70% during the Northern Hemisphere summer.” SST information from the Coast Watch program indicates SSTs off the southern California coast are warmer than normal. In addition, the intent of the regulations was to prevent bycatch of loggerhead sea turtles in the DGN fishery. The presence of loggerheads in the area indicates that closure of the fishery meets the intent of the regulations and the RPA requiring their promulgation.

Classification

This action is required by 50 CFR 660.713 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the DGN fishery. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C-553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure responds to the best available information, some of which only became available in July, and is necessary for the conservation of loggerhead sea turtles. The closure period anticipated by the regulation ends, at the latest, on August 31st. A delay in effectiveness until early August may allow the fishery to interact with and injure or kill loggerhead sea turtles that may occur within the SCB during the time period in which the regulation was intended to protect loggerheads.

Authority: 16 U.S.C. 1801 et seq.

Dated: July 22, 2014.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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