



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE298

Magnuson-Stevens Fishery Conservation and Management Act; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: The Regional Administrator, NMFS West Coast Region, has determined that an application for an exempted fishing permit (EFP) warrants further consideration and requests public comment on the application. The application requests a 2-year exemption from prohibitions under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) to test the effects and efficacy of using modified drift gillnet (DGN) gear to fish for swordfish and other highly migratory species (HMS) off the U.S. West Coast in the Pacific Leatherback Conservation Area (PLCA) when environmental conditions are favorable during the PLCA closure period.

DATES: Comments must be submitted in writing by [*Insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2015-0063, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the

Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0063, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments. EFP applications will be available under Relevant Documents through the same link.

- Mail: Attn: Chris Fanning, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2015-0063” in the comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Chris Fanning, NMFS, West Coast Region, 562-980-4198.

SUPPLEMENTARY INFORMATION:

On July 2, 2014, the Pacific Fishery Management Council (Council) solicited EFP proposals¹ to test alternative gears to large-mesh drift gillnet and/or new approaches or methods for targeting swordfish and other HMS off the U.S. West Coast. In response, the Alliance of Communities for Sustainable Fisheries (ACSF) submitted an application that, in summary,

¹ http://www.pcouncil.org/wp-content/uploads/HMS_EFP_Notice_Letter_July2014.pdf

proposes to fish in the PLCA using two DGN vessels, with 60 sets per vessel and 100% monitoring, from August 15 to November 15. The PLCA, located off the coast of California and Oregon, is an area closed to DGN fishing annually from August 15 to November 15 under the HMS FMP (50 CFR 660.713(c)), and is bounded by straight lines connecting the following coordinates in the order listed: Point Sur at 36°18.5' N. lat., to 34°27' N. lat. 123°35' W. long., to 34°27' N. lat. 129° W. long., to 45° N. lat. 129° W. long., and then to the point where 45° N. lat. intersects the Oregon coast. This application contemplates that the two commercial fishing vessels would be exempt from the PLCA closure period, and applicants would have access to this area when favorable oceanographic conditions (e.g., sea surface temperature, prey abundance) are present. The EFP would test whether these triggers could result in increased swordfish catch and decreased bycatch. Vessels fishing under an EFP would be subject to all other regulations implementing the HMS FMP, including measures to protect sea turtles and marine mammals. The applicants requested issuance of an EFP for two fishing seasons or two calendar years. The Council discussed the merits of the application at its March 2015 meeting and concluded that obtaining additional information was warranted.²

At the June 2015 Council meeting, ACSF submitted a revised application addressing the Council's concerns. Based on the revised application, the Council recommended³ that NMFS consider issuing an EFP to ACSF as long as the EFP were restricted in accordance with the Council's supplementary conservation recommendations. These recommendations were to ensure adequate scientific design while testing the hypothesis that dynamic ocean management practices could be used to effectively reduce the risk of protected species bycatch when targeting swordfish. The Council recommendation is consistent with the policy it articulated in June 2014

² <http://www.pcouncil.org/wp-content/uploads/2015/03/0315decisions.pdf>

³ <http://www.pcouncil.org/wp-content/uploads/2015/06/0615decisions.pdf>

to evaluate future access to the PLCA in light of full accountability and acceptable bycatch cap levels.⁴ After reviewing the revised EFP application, on July 8, 2015, the Council transmitted to NMFS its written recommendation to issue an EFP based on the ACSF application. At its November 2015 meeting, the Council reaffirmed their support of a DGN EFP within the PLCA that uses favorable oceanographic conditions to trigger fishing times and locations. Similar uses of dynamic ocean management have proven effective in domestic fisheries. For example, fishermen are using sea surface temperatures and sea turtle thermal habitat preferences to minimize loggerhead sea turtle (*Caretta caretta*) interactions in the Hawaii longline fishery. On the U.S. East Coast, fishermen have reduced yellowtail flounder bycatch in the Atlantic sea scallop fishery by reporting bycatch levels in small spatial grids via vessel monitoring systems with coincident avoidance of unfavorable grids by the fleet. Since adopting this program, the fishery has remained open for its entire duration because bycatch levels have not been reached (Lewison *et al.*, 2015). There are other examples of successful fishery-trigger mechanisms in salmon gillnet fisheries in the Strait of Juan de Fuca and the Columbia River, where bycatch observations in test fisheries and species-specific dam counts, respectively, are successfully used to obtain high target species catch and low incidence of bycatch in full-fleet fisheries (Pacific Fishery Management Council, personal communication).

Academic researchers, in collaboration with NMFS scientists, have been developing EcoCast, a tool to predict favorable habitat for swordfish and bycatch species to assist fishers in targeting catch and in bycatch avoidance. This tool may be used to support the EFP objective of testing the use of environmental triggers to direct fishing to times and areas of increased swordfish catch and decreased bycatch.

⁴<http://www.pcouncil.org/wp-content/uploads/0614decisions.pdf>

The Council has indicated that if the innovations tested in this EFP are able to demonstrate higher target catch and lower bycatch than the current DGN fleet, the Council would consider subsequent EFPs that increase the number of vessels fishing within the PLCA. The Council may also recommend granting DGN vessels access to all, or portions of, the PLCA when oceanographic conditions suggest that swordfish catch rates would be higher and protected species bycatch would be lower.

Proposed Restrictions for an EFP in the PLCA

The Council suggested conditions that NMFS impose on an EFP, if issued, to ACSF. Conservation and gear modification recommendations, as well as general EFP recommendations, include:

- (1) An observed serious injury or mortality of a single leatherback sea turtle would terminate the EFP.
- (2) No more than two large mesh drift gillnet vessels could fish under the EFP.
- (3) The EFP fishing vessels must consult with scientists from NMFS' Southwest Fisheries Science Center about current ocean climate conditions that are thought to be favorable for identification of optimal time/area locations to conduct test fishery operations. In this consultation, the scientists would use oceanographic data to predict general times and areas where target catch rates are expected to be high relative to bycatch rates, especially bycatch rates of protected species. The scientists would identify times and areas anticipated to have favorable environmental conditions, deliver this information via web interface or via mobile application, and the fishermen would determine the exact time and location of EFP fishing activity based on ocean conditions and their experience optimizing the ratio of target to non-target species. These

data will be used to test and improve the oceanographic models to ensure they are accurately predicting times and areas with a high target catch to bycatch ratio.

(4) The EFP vessels must collect detailed data on catch and bycatch, gear deployment, and ocean conditions, including: catch-per-unit-effort, sea surface temperature, water clarity, profiles of temperature with depth, species and abundance of marine mammals and turtles in the area, and other information available from sonar, echo-sounder, or other onboard electronic technology devices.

(5) 100% on-board observer coverage would be required while fishing under the EFP.

(6) The following gear modifications must be instituted relative to the rest of the DGN fishery:

- installation of 50 percent more acoustic pingers,
- breakaways on the net allowing large mammals to break through the gear (note: a ‘breakaway’ is a weakly sewn together area of the net that would allow a large animal to break the net and avoid entanglement),
- shortening soak times to only 6 hours, and
- shortening the net length to 900 fathoms.

(7) Impose an annual incidental catch limit for striped marlin.

(8) Prohibit fishing in leatherback sea turtle critical habitat (designated under the federal Endangered Species Act (ESA)).

(9) Prohibit fishing in waters north of the Washington/Oregon border, and in the first year prohibit fishing in waters north of the Oregon/California border.

(10) Fishing under the EFP would cease for the remainder of the year if the number of observed takes in the fishery for animals listed as threatened or endangered under the ESA is the

lower of either double the amount of incidental take estimated in an ESA biological opinion prepared for the EFP, or 10 animals.

Additional EFP Considerations

The elements of the EFP application and the Council recommendations will be considered by NMFS; however, if NMFS issues an EFP, it may impose different and/or additional mitigation measures as it deems necessary and in accordance with other applicable laws, such as the ESA. In considering this matter, NMFS is seeking public comment on the EFP application, the Council's recommended conditions, and any other suggested mitigation measures to improve conservation elements while maintaining feasible fishery operations. In particular, NMFS is interested in additional methods and technologies that could be applied to the fishing operations in order to further reduce the likelihood of interactions with federally endangered leatherback sea turtles. NMFS is mindful of the population status of Pacific leatherback sea turtles and that test fishing in the PLCA with DGN gear would have interaction risks with the endangered Pacific leatherback sea turtle. Designing an EFP that minimizes such risks is critical, and therefore NMFS is also interested in comments on how this proposed EFP complements the draft Pacific Coast Swordfish Fishery Management and Monitoring Plan and the future of the U.S. West Coast swordfish fishery.

In accordance with NOAA Administrative Order 216-6, if NMFS pursues issuance of an EFP, then NMFS will complete the appropriate National Environmental Policy Act (NEPA) analyses. Additionally, issuance of an EFP would be developed for consistency with all applicable laws, including Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*), to ensure it would not be likely to jeopardize the continued existence and recovery of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. Given

strong public interest in the DGN fishery and its impacts on protected species, if NMFS decides to pursue issuing an EFP to ACSF, then it will publish a ‘Notice of Availability’ to give the public the opportunity to comment on the draft NEPA analysis (i.e., either environmental assessment or environmental impact statement) that would be prepared for the proposed action.

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

Dated: February 24, 2016.

Jennifer M. Wallace,
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National Marine Fisheries Service.

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