



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA322]

Fisheries off West Coast States; Highly Migratory Fisheries; Exempted Fishing Permit to Fish with Longline Gear in the West Coast Exclusive Economic Zone

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

ACTION: Notice of intent to prepare an Environmental Impact Statement; announcement of public scoping period and request for comments.

SUMMARY: NMFS announces its intent to prepare an Environmental Impact Statement (EIS), in accordance with the National Environmental Policy Act (NEPA) of 1969, to analyze the potential short- and long-term impacts of the proposed action to issue an Exempted Fishing Permit (EFP), on the human (biological, physical, social, and economic) environment. This notice of intent to prepare an EIS invites interested parties to provide comments on alternatives to be considered in an EIS, potential terms and conditions to minimize adverse effects to the environment, and to identify potential issues, concerns, and any reasonable additional alternatives that should be considered.

DATES: Written comments on the scope of the analysis will be accepted through *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*. Comments must be received by 5 p.m. Pacific Daylight Time (PDT) on *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*. Public comments will also be accepted during a webinar scheduled for 10 a.m. to 12 p.m. PDT, August 27, 2020. Please notify Amber

Rhodes (see **FOR FURTHER INFORMATION CONTACT**, below) by August 21, 2020, if you plan to attend the webinar. Instructions for connecting or calling into the webinar will be posted at: www.fisheries.noaa.gov/west-coast/laws-and-policies/west-coast-region-national-environmental-policy-act-documents. Accommodations for persons with disabilities are available; accommodation requests should be directed to Amber Rhodes at least 10 working days prior to the webinar.

ADDRESSES: You may submit comments on the scope of this EIS by any of the following methods: Submit electronic public comments via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0103
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

—OR—

Email written comments to wcr.hms@noaa.gov. Include the identifier “NOAA-NMFS-2020-0103” in the comments.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. 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. All comments received are a part of the public record. All personal identifying information (*e.g.*, name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Amber Rhodes, NMFS, 562-980-3231, Amber.Rhodes@noaa.gov or Lyle Enriquez, NMFS, 562-980-4025,

Lyle.Enriquez@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

In 2015, the Pacific Fishery Management Council (hereafter, the Council) recommended that NMFS issue an EFP authorizing the applicants to engage fish with longline gear within the Exclusive Economic Zone (EEZ). When soliciting requests for EFP proposals, the Council's objective was to test gear types or methods that could serve as an alternative to using drift gillnet (DGN) gear to catch swordfish in the U.S. West Coast EEZ, or to test different approaches to contemporary DGN fishing practices. DGN and harpoon are the only two gear types currently authorized under the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP); of the two, DGN contributes the majority of the landings to the West Coast. Since 1985, U.S. West Coast swordfish catch has dramatically declined. This is in large part due to attrition in the DGN fleet. Additionally, the state of California has developed a DGN "permit transition program" that is expected to further reduce participation in this fleet and is designed to limit the duration of current participants' DGN fishing practices. Without other lawful, economically viable gear types, the U.S. West Coast swordfish fishery is unlikely to operate at optimum yield into the foreseeable future.

According to applicable Federal regulations, a NMFS Regional Administrator may authorize "for limited testing, public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental

harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited” (50 CFR 600.745(b)). Issuance of an EFP provides such authorization.

On April 29, 2019, NMFS issued an EFP, which was signed by the applicants and became valid in June of 2019 (84 FR 20108, May 8, 2019), for two vessels to target swordfish and other HMS using shallow-set longline (SSLL) and deep-set longline (DSLL) gear in the West Coast EEZ off California and Oregon. NMFS had completed a final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) on April 19, 2019, which found that the impacts of this EFP on the human environment were not significant under the terms of NEPA. Also, on July 11, 2018, NMFS had completed an Endangered Species Act (ESA) Section 7 consultation which had concluded that the fishing activities authorized under the EFP were not likely to jeopardize the continued existence of ESA-listed species, or result in the destruction or adverse modification of critical habitat. Issuance of this EFP was followed by litigation in the United States District Court for the Northern District of California, in which the plaintiffs alleged, among other claims, that NMFS had not used the best scientific information available (BSIA) in its NEPA analysis or ESA Section 7 consultation, and that as a result, NMFS’ issuance of the EFP violated both NEPA and the ESA. *Center for Biological Diversity, et al. v. Ross, et al.*, 4:19-cv-03135-KAW (N.D. Cal.). On December 20, 2019, the Court ruled in favor of the plaintiffs, and vacated and set aside the EFP, EA and FONSI, and 2018 Biological Opinion. No SSLL or DSLL fishing activity occurred within the West Coast EEZ under the EFP since the Court’s ruling.

NMFS is reviewing options and additional data for re-analyzing the impacts of this EFP with respect to ESA and NEPA. Other than acquiring gear and landings permits

and fishing licenses to fish waters off California and Oregon, there are no other permits, licenses, or entitlements needed to conduct the proposed action.

Purpose and Need for the Proposed Action

The purpose of EFPs is to allow fishing practices that are new to a fishery and not otherwise permitted under a FMP. For example, EFP trials to fish for swordfish with deep-set buoy gear led to a Council recommendation to NMFS to authorize the gear. However, it remains unclear whether deep-set buoy gear will be an economically feasible substitute for DGN, which is used to harvest both swordfish and other marketable highly migratory species. The specific purpose of this EFP is to allow exploratory longline fishing to gauge impacts, determine whether this type of fishing is economically viable, and assess the type and extent of interactions with protected species and non-target finfish.

The proposed action is needed because fishing with longline gear is currently prohibited in the West Coast EEZ under 50 CFR 660.712(a)(1). This prohibition pre-dates gear and operational modifications in U.S. longline fisheries that have proven effective elsewhere for reducing protected species interactions, injuries, and mortalities (50 CFR 665.812 and 665.815). Without testing potentially viable alternatives to fishing with DGN, the U.S. West Coast swordfish fishery is unlikely to operate at optimum yield into the foreseeable future.

Gear Configurations and Operations

Longline gear is an umbrella term referring to two distinct gear configurations. These configurations include deep-set and shallow-set. DSL is typically fished at depths of ~984 to 1,312 feet (~300 to 400 meters (m) or deeper) and more commonly used to

target tunas. SSSL is typically fished at less than 328 feet (< 100 m depth) and more commonly used to target swordfish. The proposed action area for this EFP is the United States EEZ off California and Oregon.

Alternatives

The range of alternatives includes a No Action alternative and reasonable action alternatives that meet the purpose and need. These action alternatives may differ in the limits set on sea turtles observed hooked, entangled, or killed during fishing under the EFP. Additionally, the action alternatives may differ in limits set on fishing activity (*e.g.*, number of vessels, sets, or hooks, and time-area constraints).

Terms and Conditions

In addition to the loggerhead and leatherback sea turtle limits, the action alternatives will include terms and conditions to facilitate data collection and mitigate potential impacts of the EFP activities on the environment. The list of measures below includes a menu of terms and conditions that could apply to the action alternatives in the EIS.

1. 100 percent observer coverage.
2. EFP fishing trips limited to Federal waters only, and cannot co-occur on trips that include fishing under alternative authorizations.
3. Vessel monitoring systems installed and operating for all EFP activities.
4. No transfer of fish to or from vessels operating under the EFP while at sea.
5. No fishing within 50 nautical miles of the mainland shore and islands.
6. No fishing within the Leatherback Critical Habitat area (77 FR 4170, January 26, 2012).

7. No fishing within the Southern California Bight.
8. Restrictions on setting gear within the boundaries of the Pacific leatherback conservation area from August 15 through November 15.
9. Restrictions on EFP fishing in waters north of the Oregon/California border.
10. Gear and bait requirements (*e.g.*, 50 CFR 665.812 and 665.813).
11. Limits on bycatch (*e.g.*, striped marlin).
12. Requirement for setting SSLL at night.
13. Seabird avoidance, protection, and handling measures (50 CFR 660.712(c) and 50 CFR 660.21).
14. Prior to making fishing sets, EFP operators will be required to consult the dynamic ocean modeling tool, EcoCast.
15. Operators must participate in a NMFS-hosted workshop focused on compliance with terms and conditions of the EFP, including training on the use of EcoCast.
16. Operators must possess on board a valid Pacific HMS permit (50 CFR 666.707(a)).

Public Scoping Process

The primary purpose of the scoping process is for the public to assist NMFS in developing the EIS. NMFS requests that the comments be specific. In particular, we request information regarding: important issues; possible alternatives that meet the purpose and need; direct, indirect, and cumulative environmental impacts; and potential terms and conditions that may minimize adverse effects, including time or area restrictions or both to reduce environmental impacts. In addition to written public comments received during this scoping period and the comments received during the

proposed webinar, NMFS will consider public comments and recommendations of the Council's advisory bodies related to the Council's recommendations to NMFS to approve the EFP between 2015 and 2019. In addition to those opportunities for public comment and the opportunities being provided with this notice, NMFS will also make a draft EIS for the proposed action available for public comment.

Dated: August 4, 2020.

Jennifer M. Wallace,

Acting Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service.

[FR Doc. 2020-17332 Filed: 8/7/2020 8:45 am; Publication Date: 8/10/2020]