



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA502]

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: NMFS has determined that twenty exempted fishing permit (EFP) applications warrant further consideration and is requesting public comment on the applications. All EFP applicants request an exemption from a single prohibition (the use of unauthorized gear to harvest highly migratory species (HMS)) 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 deep-set buoy gear (DSBG), and/or deep-set linked buoy gear (DSLBG), and/or night-set buoy gear (NSBG) to harvest swordfish and other HMS off of the U.S. West Coast.

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-2020-0135, 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-2020-0135, 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-2020-0135” in the comments.

- *Email:* wcr.hms@noaa.gov

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: DSBG fishing trials have occurred for the past 10 years (2011-2015, research years; 2015-2020, EFP years) in the U.S. West Coast Exclusive Economic Zone (EEZ) off California. The data collected from this fishing activity have demonstrated DSBG to achieve about a 95 percent marketable catch composition. Non-marketable catch rates have remained low and all non-marketable catch were released alive. Due to DSBG being actively tended, strikes are capable of being detected within minutes of a hooking on the line; as a result, all catches can be tended quickly, with catch brought to the vessel in good condition. To date, DSBG has had five interactions with protected species, four

Northern elephant seals and one loggerhead sea turtle, which were not seriously injured and were released alive due to the quick strike detection of the gear. Northern Elephant seals are protected by the Marine Mammal Protection Act and loggerhead sea turtles are protected by the Endangered Species Act.

DSLBG trials have produced similar data to DSBG activities. Swordfish and other marketable species have represented about 90 percent of the catch. Non-marketable species are released alive due to DSLBG quick strike detection and active gear tending. To date, there have been no interactions with protected species using DSLBG.

One vessel began fishing with NSBG in 2020. Data from this gear type are not yet available.

At its September 2020 meeting, the Pacific Fishery Management Council (Council) received twenty additional applications for EFPs in time for review and recommended that NMFS issue these EFPs to authorize use of DSBG and/or DSLBG (see Table 1). Council recommendations can be found on the September 2020 meeting Decision Document here, <https://www.pcouncil.org/documents/2020/09/september-2020-decision-summary-document.pdf/>.

The Council reviewed twenty DSBG EFP applications and recommended for issuance by NMFS nineteen of the applications. The application that was not recommended was for three vessels to fish NSBG. Also, two applications included NSBG in addition to other DSBG fishing, and the Council did not recommend the NSBG portions. Four applications in total proposed using NSBG, but the Council did not recommend additional NSBG EFPs until data from the one previously-approved (September 2019) NSBG EFP becomes available in 2021. The Council did recommend that the previously-approved night fishing EFP be allowed to be fished on another

vessel owned by the applicant (application 14 in the table below), but not on both vessels simultaneously.

At this time, NMFS is requesting public comment on all twenty EFP applications NMFS will take the Council's comments into consideration along with public comments on whether or not to issue these EFPs. If all applications were approved, the EFPs would allow, in addition to EFPs previously issued by NMFS, up to twenty three vessels in total to fish, with fourteen vessels with DSBG only, four vessels with DSLBG, and five vessels with NSBG, throughout the duration of each EFP, in the U.S. West Coast EEZ with permitted exemption from the prohibitions of the HMS FMP pertaining to non-authorized gear types. Aside from the exemption described above, vessels fishing under an EFP would be subject to all other regulations implemented in the HMS FMP, including measures to protect sea turtles, marine mammals, and seabirds.

Table 1. Summary of Deep-set Buoy Gear Exempted Fishing Permit Applications Submitted for the September 2020 Council Meeting.

(<https://www.pcouncil.org/documents/2020/08/e-2-attachment-1-summary-of-dsbg-efp-applications-received-for-the-september-2020-council-meeting.pdf/>)

E.2 Attachment No.	Applicant Name	No. of Vessels	Fishing Method	Notes
2	Athens, Tim	1	DSLBG	
3	Dell, Kevin	1	DSBG	
4	Dillman, Todd	1	DSBG	
5	Eberhardt, James	1	DSBG	
6	Fischer, Paul	1	DSBG	
7	Ghio, Romolo	1	DSLBG	
8	Haworth, Nick Haworth, David	3	NSBG	Not recommended
9	Herman, Marc	1	DSLBG	
10	Lebeck, Mark	1	DSLBG, NSBG	NSBG portion not recommended
11	Lorton, Arthur Lorton, J. Anthon	1	DSLBG	

12	Medland, Robert, Castenada, James, Clayton, Terry	2	DSBG	
13	Pack, Troy Fegerstedt, Ashley	1	DSBG	
14	Perez, Nathan Carson, Thomas	1	NSBG	Same vessel as #15
15	Perez, Nathan Carson, Thomas	1	DSBG	Same vessel as #14
16	Saraspe, Andres Saraspe, Charles	2	DSBG	
17	Sidielnikov, Andrii	1	DSBG	
18	Tharp, Nicolas	1	DSBG	
19	Volaski, Andrew	1	DSLBG	
20	Wallace, Miles	1	DSBG, NSBG	NSBG portion not recommended
21	Weiser, Steve	1	DSBG	

Fishing Method DSBG – standard deep-set buoy gear, DSLBG – linked deep-set buoy gear, NSBG – night set buoy gear. DSLBG vessels can also use standard deep-set buoy gear.

NMFS will consider all public comments submitted in response to this **Federal Register** notice prior to issuance of any EFP. Additionally, NMFS has analyzed the effects of issuing DSBG and DSLBG EFPs, and would analyze issuing additional NSBG EFPs in accordance with the National Environmental Policy Act and NOAA’s Administrative Order 216-6, as well as for compliance with other applicable laws, including Section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), which requires the agency to consider whether the proposed action is 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.

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

Dated: October 16, 2020.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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