

NMFS Report
West Coast Regional Office
Highly Migratory Species - Regulatory Matters

Temporary Rule to Reduce Risk of Sperm Whale Bycatch in the West Coast Swordfish Drift Gillnet (DGN) Fishery: On September 4, 2013, NMFS published in the Federal Register a temporary rule (78 FR 54548) for emergency action to modify the DGN fishery for the 2013-2014 fishing season under authority of section 305(c)(1)¹ of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The purpose of the action was to reduce risk associated with sperm whale bycatch in the DGN fishery for the 2013-2014 fishing season based on recommendations from the Pacific Offshore Cetacean Take Reduction Team (TRT). The temporary rule expired on January 31, 2014, which corresponded with the traditional end of the DGN fishing season. Following discussion of the conservation measures and timelines in the rule at its March 2013 meeting, the Council sent a letter to NMFS requesting renewal of the temporary rule so that sperm whale conservation measures continue to be in place while permanent rulemaking is developed. On May 22, 2014, NMFS published in the Federal Register (79 FR 29377) a second temporary rule renewing the conservation measures implemented under the original temporary rule. The new rule will expire on August 5, 2014.

Status of Permanent Rulemaking: Based in part on the TRT recommendations and recently updated best available science on sperm whale population abundance estimates and DGN fishery annual bycatch estimates, NMFS has initiated proposed-to-final rulemaking under MSA authority. This rulemaking would mandate the use of vessel monitoring systems (VMS) on all active thresher shark/swordfish large-mesh DGN vessels and implement a 48-hour pre-trip notification requirement to facilitate observer placement on the vessels, if so requested. The target date for completing the MSA rulemaking is late-summer 2014 to coincide with the traditional start of the DGN fishing season.

Petition for Rulemaking to Prohibit Pacific Bluefin Tuna Fishing: On April 9, 2014, NMFS received a petition from the Center for Biological Diversity. The seeking amendment of the HMS FMP and promulgation of agency rules to prohibit fishing for Pacific bluefin tuna. Specifically, Petitioner requests an amendment to add Pacific bluefin tuna to the list of

¹ **SEC 305. OTHER REQUIREMENTS AND AUTHORITY**

(c) **EMERGENCY ACTION AND INTERIM MEASURES.—**

(1) If the Secretary finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency¹ regulations or interim measures necessary to address the emergency or overfishing, without regard to whether a fishery management plan exists for such fishery.

prohibited species that must be released immediately if caught or as an alternative, an amendment establishing annual catch limits for bluefin tuna and a permanent minimum size requirement to protect age classes 1-2 from fishing mortality. The petitioner requests an FMP amendment to establish reference points for bluefin tuna to guide science-based management.

Finally, the petitioner requests U.S. recommendations for international action including (1) a high seas moratorium on all fishing, (2) a Pacific-wide minimum size for bluefin tuna catch, and (3) a reduction in Pacific bluefin tuna quota for all member countries in order to meet established rebuilding goals.

Under the Administrative Procedure Act (APA), all citizens have the right to petition for the “issuance, amendment, or repeal” of an agency rule. The Assistant Administrator (AA) for NMFS will determine whether the petition contains enough information to enable the agency to consider the substance of the petition. If the AA determines not to proceed further, the petitioner shall be notified in writing of the reasons for the determination. Should the AA decide to proceed, NMFS will publish a notice in the Federal Register announcing its receipt, the name of the petitioner, and a concise statement of the petitioner's request. NMFS will notify the petitioner of its decision to proceed with the rulemaking suggested by the petition within 120 days of the receipt of the petition.

International Update

Inter-American Tropical Tuna Commission: NMFS will host a public meeting of the Scientific Advisory Subcommittee (SAS) and a meeting of the General Advisory Committee (GAC) to the U.S. Section to the Inter-American Tropical Tuna Commission (IATTC) on June 4 and 5, 2014, respectively. Both meetings will be held in the Pacific Conference Room (Room 300) at NMFS, Southwest Fisheries Science Center in La Jolla, CA. The SAS meeting topics will include, but are not limited to, the following: (1) relevant stock status updates, including yellowfin, bigeye, skipjack, North Pacific albacore, and Pacific bluefin tunas; (2) updates on bycatch mitigation measures; and (3) evaluation of the IATTC's recommended conservation measures, U.S. proposals, and proposals from other IATTC members.

The GAC meeting topics will include, but are not limited to, the following: (1) relevant stock status updates, including yellowfin, bigeye, skipjack, North Pacific albacore, and Pacific bluefin tunas; (2) U.S. regulatory changes that could affect tuna fisheries in the eastern Pacific Ocean; (3) the status of U.S. legislation to implement the Antigua Convention; (4) receiving input from SAS members; (5) formulation of advice on issues that may arise at the upcoming 2014 IATTC meeting, including the IATTC's recommended conservation measures, U.S. proposals, and proposals from other IATTC members. For further information and to RSVP please see: <https://federalregister.gov/a/2014-09958>.

The annual meetings of the IATTC and the Agreement on the International Dolphin Conservation Program are scheduled for July 7 – 18, 2014, in Lima, Peru. For additional information, see <http://iattc.org/Meetings/Meetings2014/July/IATTC-AIDCP-Annual-Meetings-JUL2014ENG.htm>.

Since the March 2013 Council meeting, NMFS has published or will soon publish the following rulemakings applicable to the IATTC Convention Area:

- 1) Final Rule to implement IATTC Resolution C-13-01, *Resolution on a Multiannual Program for the Conservation of Tuna in the Eastern Pacific Ocean during 2014-2016* (79 FR 19487). The rule and supporting documents may be viewed at: <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0014>.
- 2) Final Rule to implement IATTC Resolution C-13-02, *Measures for the Conservation and Management of Bluefin Tuna in the Eastern Pacific Ocean* (79 FR 28448). The rule and supporting documents may be viewed at: <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0119>.
- 3) Proposed Rule (will publish soon), to implement the whale shark conservation provisions of IATTC Resolution C-13-04, *Collection and Analyses of Data on Fish-Aggregating Devices*. These provisions include a prohibition on intentional setting of a purse seine on whale sharks. The resolution may be viewed at: <http://www.iattc.org/PDFFiles2/Resolutions/C-13-04-FADs.pdf>.

PFMC
06/05/14