

EXEMPTED FISHING PERMIT (EFP) FOR LONGLINE FISHING IN THE WEST COAST EXCLUSIVE ECONOMIC ZONE

In April 2007 the Council recommended that National Marine Fisheries Service (NMFS) issue an exempted fishing permit (EFP) allowing a single vessel to target swordfish with shallow set longline gear in the West Coast Exclusive Economic Zone (EEZ). The purpose of the EFP fishery would be to gather preliminary information to help determine whether longline fishing could be an economically viable alternative to the current drift gillnet fishery with less environmental impact. Longline fishing is currently prohibited in the West Coast EEZ under regulations pursuant to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The general purpose of an EFP is to allow fishing that would normally be prohibited under regulations in order to gather information and test new methods. This information gathering supports any future decision to modify management regulations related to the activity.

The Council also recommended a number of terms and conditions be placed on the EFP in order to minimize impacts to protected species and other non-target species. Key mitigation measures included:

- No fishing within 30 miles of the coastline;
- No fishing within the Southern California Bight;
- No fishing north of 45° N latitude;
- Compliance with existing HMS FMP regulations, including protected species conservation measures;
- Mandatory 100% observer coverage;
- A cap on total fishing effort of no more than four trips, 14 sets per trip, 400-1,200 hooks per set (for a maximum of 67,200 hooks deployed overall);
- Fishing conducted between September and December;
- Use of 18/0 circle hooks with 10° offset;
- Use of mackerel bait and light sticks;
- Setting gear at night to reduce seabird mortality.

In addition, the Council recommended a catch cap of 12 striped marlin, and a take cap of one short-finned pilot whale. Caps on humpback and sperm whales and leatherback and loggerhead sea turtles, which are listed under the Endangered Species Act, would be equivalent to any amounts in the Incidental Take Statement that will be part of the Biological Opinion NMFS will prepare for the action.

NMFS then began the review process leading up to issuance of the EFP, which would have allowed fishing to occur from September to December 2007. Pursuant to section 1456(c)(1)(A) of the Coastal Zone Management Act of 1972 (CZMA), Federal agencies must determine if an action will affect the state's coastal zone and whether it is consistent with the enforceable policies of the state's program, and then must notify the state agency of this determination. The state agency then has 60 days to inform the Federal agency whether it concurs with or objects to the Federal determination. On August 10, 2007, the California Coastal Commission (CCC) held a hearing on the proposed EFP at which they initially determined that they did not concur with

NMFS's determination that the EFP would be consistent. However, they then decided that the action was actually subject to section 1456(c)(3)(A) of the CZMA relating to an applicant for a Federal license or permit to conduct an activity affecting the state's coastal zone. The CCC scheduled a second hearing in December of 2007 to again consider concurrence under that section of the CZMA. However, the applicant, Mr. Pete Dupuy, withdrew his application in advance of the hearing upon learning that the concurrence would only be applicable to 2007. Because of the timing of the hearing and the fact that the EFP was only applicable to the 2007 calendar year, the CCC's actions essentially rendered any concurrence moot.

Mr. Dupuy has resubmitted a slightly updated EFP proposal from the one originally submitted in March 2006 (which was then deferred for consideration in 2007) for consideration during 2008 (see Attachment 1). The proposal is the same except for changes described in the cover letter to the resubmitted proposal. The applicant proposes to change the time period for fishing to November through March (previously the time period was September through December). He also will not fish within 50 miles offshore instead of 30 miles. Finally, recognizing the amount of time it may take for the proposal to go through all required reviews, he would like the option to conduct fishing from November 2009 to March 2010 if the EFP cannot be issued in time for him to fish from November 2008 to March 2009. In other words, if he cannot fish under the EFP in 2008-09 he asks to instead fish in 2009-10 without further review of the proposal by the Council.

If the Council recommends the EFP for implementation in 2008, they could also recommend the same terms and conditions as outlined above along with the changes proposed by the applicant. Given the relatively minor changes to the applicant's proposal, leaving the other terms and conditions the same could simplify the implementation process, because much of the environmental impact analysis developed by NMFS in 2007 could be used to evaluate potential impacts of the EFP in 2008-09.

At this meeting the Council needs to decide whether to adopt the EFP proposal for public review. If they decide to do so, then at the April 7-12, 2008 meeting the Council would finalize their recommendation to NMFS on EFP issuance.

Council Action:

Adopt EFP for public review.

Reference Materials:

1. Agenda Item C.4.a, Attachment 1: Application for an Exempted Fishing Permit to Fish with Longline Gear in the West Coast Exclusive Economic Zone.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies
- c. **Council Action:** Adopt EFP for Public Review

Kit Dahl

Note: Public comment on this topic and the high seas shallow-set longline FMP amendment (agenda item C.3) will be heard under agenda item C.5. After the combined public comment period the Council will return to this agenda item for Council action.

PFMC
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