

## NATIONAL MARINE FISHERIES SERVICE (NMFS) REPORT ON SWORDFISH FISHERY MANAGEMENT

### **Hard Caps Action Update**

NMFS published a proposed rule ([81 FR 70660](#)) on October 13, 2016 to establish Pacific Fishery Management Council (Council) recommended protected species hard caps for the California/Oregon large-mesh drift gillnet (DGN) fishery. The proposed rule would implement the Council's final preferred alternative (FPA) from its September 2015 meeting. The public comment period is currently scheduled to close on November 28, 2016; however, on October 21, 2016, representatives of potentially affected parties requested an extension of the public comment period to aid in their review of the proposed rulemaking. The request claims that DGN fishery participants are precluded from the public comment process because they are in the peak fishing season, and therefore at sea during the comment period. NMFS considered the request and is in the process of extending the comment period to December 28, 2016. Following the public comment period, NMFS will prepare a final rule and final Environmental Assessment (EA) for this action. NMFS anticipates that, if approved, the hard caps would be effective before the beginning of the 2017/2018 DGN fishing season (i.e., May 1, 2017).

### **Monitoring Action Update**

At its September 2015 meeting, the Council also adopted the following FPA for DGN fishery monitoring:

*Maintain the 30% target observer coverage level at a minimum and/or require electronic monitoring (for the purpose of catch and bycatch accounting). Remove the unobservable vessel exemption. Achieve 100% monitoring by 2018.*

NMFS did not include the monitoring provisions with the hard caps proposed rule because 100 percent monitoring would not be required until 2018. NMFS is currently drafting the monitoring proposed rule and anticipates that, if approved, the rule to require 100 percent monitoring in the DGN fleet and remove the unobservable exemption would be effective by May 1, 2018. Since electronic monitoring (EM) has not been fully tested in the fishery, the rule would require on-board observers, rather than EM, on 100 percent of all DGN fishing trips. Unobservable vessels would have no monitoring options and may have to leave the fishery. Additionally, DGN vessel owners and operators would be responsible for all observer sea day costs. NMFS is using the Preliminary Draft EA ([Agenda Item G.2.a, NMFS Report 1, September 2015](#)) to describe the purpose and need, and thus rationale, for impacts associated with the monitoring action.

A Regulatory Impact Review (RIR) and Regulatory Flexibility Act (RFA) analysis are required as part of a proposed rule package, and these analyses relate to the economic effects of the proposed action. The RIR satisfies Executive Order (EO) 12866. Generally, an RIR is a cost-benefit analysis, which concludes whether the benefits of the proposed action justify the costs. The purpose of an RFA analysis is to consider the impact of a proposed action on small entities.

When NMFS proposes to implement a preferred alternative with associated costs, it must describe how the benefits to the nation offset the costs to the nation (under EO 12866), and whether any

direct costs to small entities would adversely affect the profitability of the regulated entities or put them at a competitive disadvantage relative to large entities. When a proposed action includes substantial direct costs to small entities, as the proposed monitoring action does, NMFS must explain the rejection of any alternatives that, if implemented, would have been substantially less burdensome on the specified entities. In preparing such an analysis, NMFS has been reviewing Council records with respect to the rejection of less-costly alternatives considered for the proposed action. Before concluding these economic analyses, NMFS may request that the Council review our approach.

#### **DGN Observer Coverage Update**

DGN observer coverage during the 2015/2016 fishing season (May 1, 2015, through January 31, 2016) was lower than NMFS' 30 percent target. Observer coverage for the season was 10.8 percent. Although seasonal coverage was 10.8 percent, observer coverage for the 2015 calendar year was 20.5 percent. While total fishing effort for the season was comparable to recent years, the distribution of the timing of fishing was not. Very little fishing occurred until mid-November 2016, with effort for the remainder of the season being much higher than usual. A late-season peak in effort, coinciding with low observer availability by that time, contributed to the low observer coverage. NMFS Observer Program staff worked with the observer provider to identify methods for increasing observer coverage to 30 percent for the 2016/2017 season, including the hiring of additional observers.