

NATIONAL MARINE FISHERIES SERVICE (NMFS) REPORT  
ON HIGHLY MIGRATORY SPECIES (HMS) ACTIVITIES

**Final Rule to Implement Protected Species Hard Caps in the California/Oregon Large-Mesh Drift Gillnet (DGN) Fishery**

On November 23, 2016, NMFS published a proposed rule ([81 FR 84546](#)) to establish protected species hard caps in the DGN fishery. NMFS received 20 public comments; 14 support the regulations and 6 oppose them. Supporters claim the action will increase protection for non-target species and incentivize industry to practice clean fishing techniques; however, many urge for more stringent regulations. Those in opposition to the proposed rule claim that hard caps will have minimal conservation benefits while imposing unnecessary economic hardship, that incidental catch of protected species by the fishery is adequately managed under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA), and that the action is not legally authorized under the Magnuson Act. NMFS is preparing a response to the comments.

**Final Rule on Fish Aggregating Devices (FADs) and Silky Sharks**

On December 02, 2016, NMFS published a final rule under the Tuna Conventions Act ([81 FR 86966](#)) to implement IATTC [Resolution C-16-01](#) (*Collection and Analyses of Data On Fish-Aggregating Devices*) and [Resolution C-16-06](#) (*Conservation Measures for Shark Species, with Special Emphasis on the Silky Shark (Carcharhinus Falciformis) for the Years 2017, 2018, and 2019*).

The final rule requires the owner or operator of a U.S. purse seine vessel in the Eastern Tropical Pacific to uniquely mark and submit recordkeeping information for any FAD they deploy after January 1, 2017. In addition, it provides conservation measures for silky sharks caught by U.S. purse seine and longline vessels. The final rule became effective on January 1, 2017.

**Proposed Rule Implementing Annual and Trip Catch Limits for Pacific Bluefin Tuna**

On January 18, 2017, NMFS published a proposed rule under the Tuna Conventions Act ([82 FR 5508](#)) to implement Inter-American Tropical Tuna Commission (IATTC) [Resolution C-16-08](#) (*Measures for the Conservation and Management of Bluefin Tuna in the Eastern Pacific Ocean*). This proposed rule, which also incorporates recommendations from the Pacific Fishery Management Council (Council), would establish annual and trip catch limits on commercial catch of Pacific bluefin tuna in waters of the eastern Pacific Ocean (EPO) for 2017 and 2018. In 2017, the catch limit for the entire U.S. fleet would be 425 mt. The 2018 catch limit would be calculated as the remainder from 2017 (*i.e.*, how much of 425 mt was not caught) added to 175 mt, except as follows: 1) if 175 mt or less is caught in 2017, then the 2018 catch limit would be 425 mt; or 2) if greater than 425 mt is caught in 2017, then the catch limit in 2018 would be further reduced by the amount in excess of 425 mt (*i.e.*, the remainder of the 600 mt limit for 2017-2018). In each year, a 25-mt trip limit would be in effect until catch is within 50 mt of the annual limit, at which time NMFS would impose a 2-mt trip limit through the end of the year or until fishing is closed. The public comment period closes on February 17, 2017.

### **Updates on the Status of Exempted Fishing Permits (EFPs)**

On December 13, 2016, NMFS' Sustainable Fisheries Division (SFD) transmitted a request to initiate ESA consultation on a longline EFP to NMFS' Protected Resources Division. NMFS also completed an informal Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) regarding ESA-listed seabirds. The USFWS concurred with NMFS' determination that the EFP is not likely to adversely affect the ESA-listed short-tailed albatross. The EFP would authorize two federally permitted west coast-based longline vessels to fish inside the U.S. West Coast Exclusive Economic Zone off California and Oregon using deep-set and shallow-set longline gear to target swordfish and other HMS.

Regarding deep-set buoy gear (DSBG) EFPs, NMFS issued an extension to the Pflieger Institute of Environment Research (PIER) EFP (5 vessels), and the Ferguson EFP (3 vessels assigned, 2 in reserve), for 2017 and 2018. NMFS intends to publish a Federal Register Notice extending the Mintz EFP, along with announcing any EFPs recommended at the March 2017 Council meeting, in April 2017. NMFS staff assisted Kent Jacobs and Martin Kaslunger in developing DSBG EFP applications.

NMFS will continue to update its [Alternate Gears for Swordfish](#) webpage, which includes the current status of EFPs, information on the EFP process, and Council decisions regarding swordfish management.

### **NOAA Technical Memorandum on Bycatch Estimates in the DGN Fishery (1990-2015)**

In January, the Southwest Fisheries Science Center published a NOAA Technical Memorandum that provides new estimates of marine mammal, sea turtle, and seabird bycatch in the DGN fishery from 1990 to 2015. The paper uses random forest classification and regression trees for model variable selection and estimation, respectively. The method represents an analytical improvement for estimating rare event bycatch with less than 100 percent observer coverage, resulting in more stable annual bycatch estimates with greater precision and less bias, compared to previous estimates that utilized ratio estimation methods. One notable difference between the two methods is that regression tree estimates of bycatch are typically positive even in years where zero bycatch is observed (sometimes fractions of animals), whereas a concurrent ratio estimate would yield a zero estimate. This results because regression tree estimates represent a more probabilistic estimate of unobserved bycatch, which is lacking with ratio estimators (zero observed = zero estimated). Conversely, regression trees are less likely to result in extremely high bycatch estimates in years where a rare event is observed and observer coverage is low. Over multi-year periods, cumulative estimates of bycatch from both methods converge towards similar values.

The new estimates reflect a considerable improvement over previous ratio estimation methods because all years of available data are used in the estimation model, rather than only intra-annual data. These improvements represent the best available science for rare-event / low observer coverage bycatch estimation in this fishery and reflect Magnuson-Stevens Act National Standard 2 fishery data goals. Bycatch estimates from the new method are being used in Pacific region marine mammal stock assessments for species that interact with the DGN fishery. This paper has been submitted as Agenda Item J.1.b, SWFSC Report, March 2017.

### **Permit and Logbook Compliance Letter**

NMFS has recently undertaken an outreach event to remind vessel operators of permit and logbook requirements to fish for HMS in accordance with the HMS Fishery Management Plan. This effort is done to promote compliance with current permit and logbook regulations. A Pacific HMS permit is required to fish for and/or land HMS into U.S. West Coast ports ([50 C.F.R. 660.707](#)). Additionally, logbooks are required on fishing trips for tuna and tuna-like species ([50 C.F.R. 660.708](#), [50 C.F.R. 300.22](#)). Failure to comply with these requirements may result in referral to the NMFS Office of Law Enforcement and in sanctions, including, but not limited to, monetary penalties or the modification, denial, or suspension of federal fishing permits ([15 C.F.R. Part 904 Subpart D](#)). For more information on permits and logbooks, including how to obtain a permit and the appropriate logbook, visit the [NMFS WCR permits website](#) and the [NMFS WCR logbook website](#), or contact the NMFS WCR Permits Coordinator, Shannon Penna, at 562-980-4238 or [wcr.permits@noaa.gov](mailto:wcr.permits@noaa.gov).

### **Updates on Marine Mammal Import Provision Process**

On January 1, 2017, the final rule (August 15, 2016, [81 FR 54389](#)) to implement provisions of the MMPA that aim to reduce marine mammal bycatch associated with foreign commercial fishing operations became effective. The final rule requires nations exporting fish and fish products to the United States to be held to comparable standards as U.S. commercial fishing operations with respect to the incidental mortality or serious injury of marine mammals. The rule also establishes the criteria for evaluating a harvesting nation's regulatory program for reducing marine mammal bycatch and the procedures required to receive authorization to import fish and fish products into the United States.

To ensure effective implementation, the rule establishes a 5-year exemption period to allow exporting nations an opportunity to adjust regulatory programs to comply with the comparability standards of the rule. At the end of the 5-year exemption period, the United States will review each applicable nation's application for a "comparability finding" for its fisheries. If the Assistant Administrator denies or terminates a comparability finding for a fishery, NMFS will identify and prohibit the importation of fish and fish products into the United States from the harvesting nation harvested in that fishery. NMFS will consult with harvesting nations and may provide assistance to harvesting nations to aid in compliance with this rule. For more information on this rule, please see Agenda Item J.1.a, NMFS Report 2, March 2017 or visit [http://www.fisheries.noaa.gov/ia/slider\\_stories/2016/08/mmpafinalrule.html](http://www.fisheries.noaa.gov/ia/slider_stories/2016/08/mmpafinalrule.html).

### **DGN Fishery Performance Metrics**

At its September 2015 meeting, the Council adopted DGN performance metrics for non-ESA-listed marine mammals and finfish. If the fishery exceeds a performance metric, the Council would determine if additional management measures are needed to further minimize bycatch. The first fishing season that the DGN fishery operated under performance metrics was from May 1, 2016, through January 31, 2017. The observer data from this fishing season are not available. Once the data are finalized, NMFS will post an observed catch summary on its WCR website. The catch summary is available each year in advance of the June Council meeting. The Council could task the HMS Management Team (HMSMT) to use this summary each year to determine whether the DGN fishery exceeded any performance metric. This would be consistent with the data the HMSMT used to develop performance metrics alternatives.

**Priority List of Future HMS Activities**

In November 2016, the Council asked NMFS to provide a list of priority actions for the agency to help coordinate future workload planning. NMFS will submit a full report under agenda item C.5 - Future Meeting Agenda and Workload Planning that details NMFS upcoming workload and timelines related to HMS actions.