

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE REPORT ON DEEP-SET BUOY GEAR ROA

The California Department of Fish and Wildlife (CDFW) has reviewed the National Marine Fisheries Service (NMFS) report updating the National Environmental Policy Act (NEPA) analysis of deep-set buoy gear (DSBG) range of alternatives (ROA; [Agenda Item J.6.a. Supplemental NMFS Report 1](#)). CDFW appreciates NMFS effort to provide this early review, prior to the Pacific Fishery Management Council's (Council) September 2019 meeting, but is concerned that some aspects of the report, if taken out of context or assumed to be National Environmental Policy Act (NEPA) analysis, could be interpreted incorrectly.

The report identifies species that “are likely to be affected” by the proposed action. The report defines this as “...the list of species that have had at least one interaction with DSBG.” This could be construed as an Endangered Species Act (ESA) Section 7 consultation affect determination criteria. For ESA listed species, it would be correct to make a determination of “May affect, but not likely to adversely affect” in the case of extremely limited potential interactions with the species. In the case of this analysis, however, only one ESA listed species has been encountered during the exempted fishing permit (EFP) period, which was a single entanglement of a loggerhead sea turtle caused by incorrect gear configuration. All other species are not ESA listed and should not be held to the same consultation standard. A single interaction with a non-injurious outcome or very limited interactions with non-protected species that are legal to retain should not be analyzed in the same manner as ESA listed species. CDFW recognizes that NMFS will consult with its Protected Resources Division in completing an actual NEPA analysis and that a draft Environmental Impact Statement (DEIS) will separate out impacts for ESA and non-ESA listed species and emphasizes this to allow for a better understanding of the NMFS report.

Since data from the linked buoy gear (LBG) EFPs were not available for use in this draft biological analysis CDFW looks forward to a more comprehensive review of LBG EFP data in the DEIS. CDFW is also encouraged that information from the Pflieger Institute of Environmental Research along with the initial data from the five active LBG EFPs indicate that catch composition is similar to standard buoy gear for marketable species and that no interactions with protected species have occurred in the 68 EFP fishing days to date. CDFW supports the Council's preliminary preferred alternative which does not recommend immediate issuance of LBG permits once authorized and believes that NMFS' proposed analysis of these data will help to inform limited conclusions on the known catch with the LBG configuration.

Regarding potential DSBG fishing effort, the NMFS analysis is based on an assumption that “...the Council's ROA proposes much higher levels of DSBG fishing effort than have existed to date in the EFP fishery.” While it is true that the Council's ROA includes permit issuance caps that are greater than the number of EFPs issued, or fished, to date, the analysis uses EFP fishing

effort (26 permits fished), compared to Council approved EFPs (60 permits approved), for a single year (2018) to estimate a ratio of 43% actively fished permits. It is likely incorrect to assume that the proportion of active EFPs and/or effort level of the active EFPs, would be comparable to that of an authorized fishery. This approach potentially overestimates effort in an established fishery, as EFP participants are, by the nature of the EFP process, more likely to be active and, in fact, are encouraged to fish by the conditions of the EFP. EFP recipients who do not show effort may not receive an EFP renewal or be considered for limited entry permit issuance under the Council's ROA, whereas no such effort requirement is indicated to maintain a permit in an authorized fishery. CDFW recommends that NMFS consider input from the Science and Statistical Committee and Highly Migratory Species Management Team at this meeting on alternate methods to estimate future DSBG effort.

NMFS stresses that the "...range of predictions rely on data-limited assumptions from the EFP fishery..." and that the assumptions are dependent upon a variety of potential factors. Despite this, the report goes on to provide detailed mathematical estimates of catch for all species encountered. Species with a limited number of interactions, in particular, single interactions with species such as Yelloweye Rockfish, which occur outside the depth range where this gear will legally fish, should be discussed in a manner that explains how the interaction occurred and the fact that such interactions are unlikely in the fishery if approved. The nature of these single interactions, the ability to release species quickly and in good condition, and the fact that several included species are marketable and legal to retain, causes this approach to considering catch in an authorized DSBG fishery to likely be inaccurate. CDFW looks forward to information on the nature of DSBG fishing, the limited impacts seen, and the required gear tending that limits the harm to released species for non-ESA or MMPA listed species in the DEIS.

CDFW appreciates NMFS substantial effort in providing this draft analysis in a timely manner, as well as considering data restrictions and the level of uncertainty involved. It is important, however, to not overstate the limitations, which may incorrectly imply that there is something different about DSBG than any other new gear type with limited data. For example, the discussion statement that the dataset is "...subject to potential limitations in the accuracy of self-reported logbook data" and while technically correct, is also true of any self-reported logbook data which are regularly used in fisheries management decisions. Similarly, while the discussion points out species-specific issues for Pelagic Thresher Sharks (a marketable species) and loggerhead sea turtles, it makes no mention of the Yelloweye Rockfish discussed above. Similarly, the report concludes that the methodology used accounts for uncertainty, yet still presents estimates of hard numbers for all species encountered. CDFW looks forward to the revised analysis and DEIS in September, which will benefit from additional data and hopefully separate impact analysis for listed species and other species potentially encountered by DSBG.