

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

Updates on IATTC Regional Vessel Register (RVR) Regulations

At the November 2019 Council meeting, NMFS West Coast Region (WCR) notified the Council of its intent to publish final regulations to implement new International Maritime Organization requirements in Inter-American Tropical Tuna Commission (IATTC) Resolution C-18-06 (*Resolution (Amended) on a Regional Vessel Register*), and amend existing regulations related to the IATTC Regional Vessel Register for purse seine vessels fishing in the eastern Pacific Ocean (EPO) (see [November 2019 NMFS Report Agenda Item J.1.a](#)). The final rule published on December 20, 2019 ([84 FR 70040](#)) and became effective January 21, 2020, except for collection of information requirements which will become effective upon OMB approval and further notice in the Federal Register.

Proposed Regulations on Fish Aggregating Devices (FADs), Silky Sharks, and Observer Safety

NMFS WCR reported at the November 2019 Council meeting its intent to publish a proposed rule regarding FADs, silky sharks, and observer safety. The proposed rule published on January 24, 2020 ([85 FR 4250](#)). This rule implements provisions in IATTC Resolutions C-19-01 (*Fish Aggregating Devices (FADs)*), C-19-05 (*Conservation of Silky Sharks*), and C-18-07 (*Improving Observer Safety At Sea: Emergency Action Plan*), and AIDCP Resolution A-18-03 (*Improving Observer Safety At Sea: Emergency Action Plan*). The proposed rule would revise existing regulations for FAD data collection to remove the reporting requirements for captains of large purse seine vessels fishing on FADs in the IATTC Convention Area that have observers onboard. Captains would still be required to provide observers with the FAD identification code and, as appropriate, other information in the standard format. The proposed rule would prohibit the retention of silky shark caught by U.S. longline vessels in the IATTC Convention Area. The proposed rule also designates a protocol for retention of silky shark on purse seine vessels fishing in the IATTC Convention Area, and requires reporting of these incidents. Finally, the proposed rule would strengthen protections for observers in longline and transshipment observer programs required by the IATTC, and on purse seine vessels required by the AIDCP.

This action is necessary for the United States to satisfy its obligations as a member of the IATTC. The public comment period ends February 24, 2020. NMFS anticipates publishing the final rule in March 2020.

Longline Exempted Fishing Permit (EFP)

In June 2019, NMFS issued an EFP for two vessels to target swordfish and other HMS using shallow-set longline (SSLL) and deep-set longline (DSLL) gear in the West Coast EEZ off California and Oregon. NMFS completed a final Environmental Assessment (EA) on April 19, 2019, which found that the impacts of this EFP on the human environment were not significant under the terms of the National Environmental Policy Act (NEPA). NMFS also completed an Endangered Species Act (ESA) Section 7 consultation which concluded that the fishing activities under the EFP are not likely to jeopardize the continued existence of any ESA-listed species, or

result in the destruction or adverse modification of critical habitat. The terms and conditions of the EFP require 100 percent observer coverage, mitigation measures to reduce protected species interactions, and hard caps on interactions with loggerhead and leatherback sea turtles. The permitted vessels undertook eight fishing trips in 2019, using both SSSL and DSLL. EFP holders are expected to submit a preliminary report on their EFP activities at the June Council meeting, per Council Operating Procedure 20.

Issuance of this EFP was followed by litigation, in which the plaintiff alleged that NMFS had not used the best scientific information available (BSIA) in its NEPA analysis or ESA Section 7 consultation, and that NMFS' issuance of the EFP violated both NEPA and ESA as a result. On December 20, 2019, the court ruled in favor of the plaintiff, and the EFP, final EA, and Biological Opinion were vacated. No SSSL or DSLL fishing activity has occurred within the West Coast EEZ under the EFP since the court's ruling. NMFS is reviewing options and additional data for re-analyzing the impacts of this EFP with respect to ESA and NEPA.

Other EFP Updates

Night-time Deep Set Buoy Gear

In September 2019, the Council recommended NMFS take steps to issue an EFP to fish modified DSBG at nighttime, as detailed in the [application](#) submitted to the June 2019 Council meeting. NMFS is working with the applicants, Nathan Perez and Thomas Carson, to obtain data on night-time rod and reel trials that may be relevant to analyzing the proposed EFP activity for the purposes of conducting NEPA and ESA analyses.

Deep Set Shortline (DSSL)

On December 20, 2019, NMFS issued the DSSL EFP application recommended by the Council in September 2018 to the applicant, John Hall. As of February 6, 2020, fishing had not yet commenced under this EFP.

Deep Set Buoy Gear (DSBG)

NMFS renewed 18 Standard Buoy Gear (SBG) and 8 Linked Buoy Gear (LBG) EFPs for 2020. These EFPs otherwise would have expired on December 31, 2019. Note that LBG EFP vessels are permitted to fish SBG or LBG in any combination. Vessels with no activity in 2019 were considered for renewal on a case-by-case basis.

Of the EFP applications the Council recommended for issuance in June 2019, NMFS issued 7 DSBG EFPs in Fall 2019. NMFS staff conducted a required Protected Species Handling Workshop on January 30, 2020, for the June 2019 EFP applicants, with 9 attendees.