

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

Negligible Impact Determination (NID)

On December 15, 2021, NMFS proposed to issue a permit authorizing the incidental take of ESA-listed marine mammals in the large-mesh drift gillnet (DGN) fishery under the Marine Mammal Protection Act (MMPA) ([86 FR 71423](#)). The public comment period ended on January 18, 2022. The NID is based on the most recent marine mammal stock assessment report (SAR), which include estimates of human-caused mortality and serious injury for the assessed stocks. The [2021 draft SAR](#) evaluates the status of humpback whales according to a California-Oregon-Washington (CA/OR/WA) stock under the MMPA. NMFS is in the process of revising humpback whale stock structure in light of the information used to evaluate 14 distinct population segments (DPSs) under the ESA ([81 FR 62259](#), September 8, 2016). The existing MMPA stock off the U.S. West Coast does not align with the two ESA-listed DPSs that occur in waters off the U.S. West Coast, including the endangered Central America DPS and the threatened Mexico DPS. NMFS will continue to use the CA/OR/WA stock structure for the purposes of preparing NIDs until the MMPA stock designations are revised, because NMFS cannot manage only a portion of an MMPA stock as ESA-listed. It is uncertain at this time when work to revise the MMPA stock will be complete with their status considered in updated SARs.

Updated Observer Catch Summaries for the DGN Fishery

The NMFS West Coast Region Observer Program posts fishery catch summaries [online](#) following completion of each DGN fishing season and quality control checks on the information collected. At this time, the catch summary for the 2021/2022 fishing season is not yet posted; however, we wish to report an interaction with a humpback whale during the 2021/2022 DGN fishing season. The whale was released alive and uninjured. We note there was also one humpback whale interaction during the 2020/2021 fishing season, which resulted in an injury (i.e., the whale was released alive with gear attached).

Deep-set Buoy Gear (DSBG) Authorization Update

Using the Council's input from the March 2021 meeting, NMFS has continued federal review of the proposed action to authorize DSBG. NMFS has also been working to develop the infrastructure needed to support the recommended permitting program for the fishery. Below, we provide some updates on regulations and other topics related to the rulemaking.

Endangered Species Act, Section 7 Consultation

- *Linked gear area restriction:* NMFS would propose prohibiting linked buoy gear (LBG) operations inside the 400m depth contour (i.e., LBG would only be allowed in depths of 400m or greater). This is intended to reduce the threat of entanglements of protected species (primarily humpback whales) that frequent nearshore waters. This limitation on LBG was a term and condition of DSBG exempted fishing permits (EFPs). Given the limited data that we have on LBG operations to-date, we believe it is prudent to maintain this restriction.

- *Pre-trip Notifications:* NMFS proposes adding pre-trip notification requirements for DSBG vessels. DSBG vessel owners and operators would be subject to these requirements when notified by NMFS. Specifically, NMFS would propose requiring DSBG vessels to provide pre-trip notifications upon request for the purpose of placing observers. This requirement would give NMFS the ability to prioritize placement of observers on vessels newer to the fishery or making trips to areas where fewer trips have been made to-date (e.g., outside of the Southern California Bight (SCB)).
- *Skipper Workshops:* NMFS would propose requiring DSBG vessel owners and operators, upon request, to participate in workshops to learn mitigation, handling, and release techniques for marine mammals, sea turtles, seabirds, and other protected species.
- *Logbook Updates:* NMFS will propose slight changes to the information collected in logbooks. Specifically, NMFS will add fields to request reporting of any interactions with marine mammals, sea turtles, seabirds, and invertebrates. This is in addition to the existing requirement to report all fish (in EFP logbooks) and injuries and mortalities of marine mammals (under the Marine Mammal Authorization Program).
- *Gear Marking:* NMFS suggests the Council consider gear marking requirements, specifically line marking, for DSBG. In recent years, there have been several whale entanglements along the U.S. West Coast involving monofilament line on an animal. Whether any of that gear was DSBG remains unconfirmed. Given the minimal amount of gear and hooks deployed during DSBG sets, there may be potential to institute gear marking in a manner that keeps costs of compliance low while offering NMFS the capability to better confirm or deny DSBG as a source of protected species entanglements. NMFS anticipates the matter as one needing more stakeholder engagement to generate recommendations that are feasible and effective, and does not plan to include gear marking requirements in a proposed rule to authorize DSBG. Rather, NMFS recommends that the Council take up this issue as a potential regulatory amendment as early in the development of the authorized fishery as possible to facilitate adoption of standards as participants are entering the fishery as opposed to afterwards.

Fishery Permitting and Monitoring:

- *Gear Endorsements:* NMFS will propose to issue categories of DSBG endorsements on the HMS permit: North, South, Linked, and Standard. Consistent with Council recommendations, LE permits will be required to fish in the SCB under a South DSBG endorsement. The categories are intended to assist in data management and analysis of a future fishery.
- *Data Integration:* Building on early efforts to produce impact analyses for this action, NMFS, working with the Pacific States Marine Fisheries Commission, has nearly completed integration of observer, logbook, and landing data for DSBG, including preparation of business rules. This work could support ongoing performance reviews of the fishery. The integrated “effort” data is being further integrated with Pflieger Institute of Environmental Research-collected data and DSBG “participant” data, including EFP signatories and vessel owners, to support qualifying applicants for limited entry (LE) permits.
- *Qualifying LE Permit Applicants:* NMFS has been working with the California Department of Fish and Wildlife to test data queries for qualifying and ranking LE permit applicants according to the tiered criteria adopted by the Council during the March 2021 meeting.

- *Vessel Owners:* NMFS has identified some instances where vessel ownership changed during the qualification period and the previous vessel owner corporation or partnership has dissolved. In these cases, NMFS proposes that only entities still in existence at the time of the application period be eligible for an LE permit.
- *Duplicate Qualifications:* There may be instances when a single individual qualifies for multiple LE permits under different names (e.g., as an individual and member of a partnership or corporation), and potentially according to different tiers of criteria. As part of the initial application, NMFS will collect ownership information for corporations to identify such duplicate qualifications. NMFS proposes that individuals that have qualified for more than one LE permit under more than one name/business be required to choose which name/business to receive the permit. This measure is intended to enforce the Council's recommendation that an individual be allowed to hold only one permit.
- *Entity Ownership:* To enforce the one-permit limit, NMFS would collect ownership information during annual permit renewals and monitor changes in the ownership of entities. NMFS proposes that individuals owning the entity holding an LE permit can divest without changes in permit ownership; however, new owners cannot join the entity without rendering the permit invalid. The intent is to carry out Council recommendations, which would allow a qualifying individual to specify an entity as the owner of an LE permit, but prohibit transfers of permits by means of changes in entity ownership.
- *Data Corrections:* To carry out the LE permit qualification process, NMFS will propose a period of time in which applicants can seek corrections in the data being used to determine eligibility and ranking for an LE permit. More information on this process will be available in a compliance guide to accompany the rulemaking to authorize DSBG.

Proposed Rule for Purse Seine Observer Exemptions in the Eastern Pacific Ocean

On February 4, 2022, NMFS published a proposed rule ([87 FR 6474](#)) to implement regulations under the authority of the MMPA and the Tuna Conventions Act (TCA) of 1950, as amended, related to purse seine observer exemptions. The rule would allow NMFS to continue issuing temporary written exemptions from purse seine observer requirements in the eastern Pacific Ocean (EPO), if the Parties to the Agreement on the International Dolphin Conservation Program (AIDCP) and/or Members of the Inter-American Tropical Tuna Commission (IATTC) have adopted emergency observer exemption procedures to address relevant global or regional health, safety, security concerns, or other international emergencies and crises. These observer requirements only apply to large tuna purse seine vessels fishing in the EPO, which are subject to 100 percent observer coverage and obtain international observers through the AIDCP/IATTC observer program. Currently, under the authority of a March 2020 Emergency Rule motivated by the COVID-19 pandemic, NMFS can waive certain observer coverage requirements implemented under the MMPA and TCA, pursuant to AIDCP and IATTC exemption procedures. However, because the Emergency Rule will expire on March 26, 2022, NMFS would no longer have the authority to issue observer exemptions to the large purse seine vessel fleet beyond that date. Given the potential for continued travel restrictions that prevent the placement of observers, the proposed rule would allow NMFS to continue issuing exemptions on a case-by-case basis for individual fishing trips, in accordance with AIDCP/IATTC exemption procedures. NMFS is soliciting written

comments on the proposed rule until March 7, 2022. The final rule is expected to be published in advance of the Emergency Rule expiration date on March 26, 2022.