

NATIONAL MARINE FISHERIES SERVICE (NMFS) REPORT ON PRELIMINARY REVIEW OF EXEMPTED FISHING PERMITS (EFPs)

In this report, NMFS provides an update on four topics: (1) status of deep-set buoy gear (DSBG) EFPs, (2) an announcement of additional EFPs, (3) availability of DSBG data through 2022, and (4) information on how criteria established by the Pacific Fishery Management Council (Council) for future EFPs would influence the nature of Endangered Species Act (ESA) consultations NMFS may need to undertake.

Status of DSBG EFPs

During the week of May 15th, NMFS sent letters to all existing standard and linked DSBG EFP holders to notify them of the date of effectiveness of new regulations to authorize DSBG, and to re-issue their respective EFPs as exempted from the requirement to possess a DSBG limited entry (LE) permit to fish in the Southern California Bight. The letter makes clear that the re-issued EFPs will expire upon NMFS' issuance of the first batch of DSBG LE permits. These EFPs authorize 40 vessels to fish standard DSBG and 15 vessels to fish linked DSBG until the first batch of 50 LE permits are issued. These totals include the EFP that NMFS issued to Mr. Harold as recommended by the Council during its September 2022 meeting.

Additional EFPs submitted in 2022

During its September 2022 meeting, the Council recommended NMFS issue an EFP to Mr. Honings for night-setting, while putting on hold consideration of his request to fish additional pieces of DSBG. NMFS did not issue this EFP because Mr. Honings has temporarily left the fishery.

Based on Council review and discussion of additional EFPs during its June and September 2022 meetings, NMFS understood the Council is interested in recommending these additional EFPs for issuance. Recognizing that the DSBG final regulations will become effective on June 7, 2023, and that the aforementioned EFPs are re-issued, NMFS is preparing for federal review of these additional EFPs.

Under federal regulations at 50 CFR 600.745, NMFS is required to publish a notice in the *Federal Register* announcing receipt of applications with a description of the proposals and an opportunity for public comment. NMFS will solicit public comment on the remaining applications from the Council's 2022 EFP cycle and can report any comments received to the Council during its September meeting. NMFS is expecting to publish this notice in the *Federal Register* in August as done in previous years.

Availability of DSBG data through 2022

As reported in [Agenda Item G.3.a Supplemental NMFS Report 1](#), NMFS has been formalizing the business rules for generating the integrated dataset and reporting it through PacFIN's APEX system. NMFS is working with the Pacific States Marine Fisheries Commission (PSMFC) to run a quality control and assurance check of the integrated dataset, including data through 2022, as agreed to by PSMFC and NMFS. This process is expected to be complete this summer, before the

“data freeze” associated with ranking DSBG LE permit applications. If requested by the Council, NMFS could report summary data on effort and catch for both standard and linked DSBG EFPs through 2022 during the Council’s September meeting.

Influence of criteria on the nature of ESA consultations

NMFS is providing this information in response to a request by the Council during its September 2022 meeting (see the [Decision Document](#)) regarding the influence of EFP criteria on ESA consultations. The degree to which Council adoption of criteria by which to evaluate EFP applications impacts the nature of ESA consultations depends on the criteria in consideration. In an effort to be more descriptive, we highlight examples of different types of criteria and discuss their utility below.

- *Prior fishing experience*: NMFS understands that criteria specifying prior experience fishing for HMS species may offer some assurance that those requesting to fish EFPs possess a working knowledge of how to effectively target swordfish or other marketable HMS and avoid interactions with protected species. However, it is challenging to perform an analysis to support such an assertion based on existing data. Rather, participation-based criteria that provide insights on whether issuance of an EFP is likely to result in a shift of fishing effort from one fishery to another may be more useful in the ESA context as to caution against double counting or overestimating expected effort.
- *Functional components of gear configurations*: When asked to consider proposed actions designed to explore gear innovations, NMFS must account for uncertainty and consider proxy datasets to discern impacts of those actions. To navigate this, it is more meaningful to describe gear configurations in terms of functional components than as gear labels. Examples include line type, set depth, weights, hook numbers and type, action area, and accessories for gear tracking or enforcement purposes. Using this approach, NMFS can better streamline the federal review process by binning gear proposals with similar functional components and data uncertainties.
- *Gear labels*: Criteria according to gear labels (e.g., DSBG standard or linked, midwater snap gear, extended linked gear, night-set buoy gear) may be useful for purposes of Council discussion, but can present challenges to developing a consistent record of decision-making when ESA consultations are based on gear labels as opposed to functional components of those configurations.
- *Purpose and goals*: The purpose and goals of an EFP are critical to evaluating proposed impacts. Criteria that represent clear purpose and goals, or differing sets of purposes or goals, for testing gear configurations under EFPs could inform ESA consultations, as well as other required analyses and consultations. While the EFP regulations at 50 CFR 600.745 require EFP applications to address the purpose and topics pertinent to impact analyses (e.g., target and incidental species, impacts on fisheries, marine mammals, threatened or endangered species, and essential fish habitat), NMFS must further evaluate the information contained in the applications. If the purpose or goal is not clear or explicit, it can be difficult to interpret how fishermen may adjust operations in response to learning when fishing. For example, some adjustments to configurations could have a positive

impact by reducing the likelihood of adverse impacts, increasing economic viability, or both. Clarity on the purpose and goals of approaches could offer insights on ways to support learning and caution against adverse impacts through programmatic controls (e.g., adaptive management elements in EFP terms and conditions).

- *Regulatory exemptions*: Other factors the Council could consider as criteria for evaluating EFP applications are exemptions from specific, existing regulations. For example, to authorize DSBG under an EFP, NMFS exempted permit holders from a prohibition on the use of an unauthorized gear. For some gear configurations, this may be an appropriate exemption. For other gear configurations, it may be more appropriate to consider explicit exemptions from existing regulations for a similar configuration. The Council might evaluate such decisions by considering the relatedness of an EFP purpose and goals to those of an existing fishery, or assessing how the Council might propose to regulate such configurations in the future (i.e., with regulatory amendments to existing fishery regulations or new regulations to authorize an additional fishery).