



MARINE MAMMAL COMMISSION

27 September 2017

Mr. Chris Fanning
National Marine Fisheries Service,
West Coast Region
501 W. Ocean Blvd, Suite 4200
Long Beach, CA 90802

Dear Mr. Fanning:

The Marine Mammal Commission staff (the Commission) has reviewed the National Marine Fisheries Service's (NMFS) *Federal Register* notice (82 Fed. Reg. 40751) requesting comments on applications for 27 new Exempted Fishing Permits (EFPs) to test the effects and efficacy of deep-set buoy gear (DSBG) and linked buoy gear, which are used to catch swordfish and other highly migratory species off the U.S. West Coast. The notice also announces NMFS's intention to extend the three existing EFPs. The Commission appreciates the opportunity to review the applications and proposed extensions. The Commission recognizes that NMFS has taken care to ensure that the applications and proposed extensions follow the agency's National EFP Guidelines, and appreciates that NMFS is aware of the potential for the fishing conducted under these permits to take marine mammals and other protected species. The Commission is encouraged that during experimental fishing and fishing under EFPs using this gear, to date only two marine mammals (both northern elephant seals), have been incidentally caught and both were released, apparently unharmed. This bycatch rate compares favorably with that recorded for the drift-gillnet fishery that also targets swordfish in the same area.

In 2016, the Commission supported the issuance and extension of a small number of similar EFPs authorizing the use of DSBG. In this case, the Pacific Fishery Management Council (Council) has recommended that NMFS issue 27 new permits, and the *Federal Register* notice indicates that the Council is reviewing an additional seven applications. Given the large number of applications, the Commission is concerned about the level of fishing that will take place if all of the requested permits are issued. As NMFS considers these applications, develops terms and conditions for the permits it authorizes, and assesses the potential impacts of the proposed fishing activities (through, among other things, reviews required under the National Environmental Policy Act and the Endangered Species Act), the Commission suggests that NMFS give careful consideration to the following factors and questions:

- The fishing effort being proposed is considerably higher than previously authorized using this gear, and, as such, there is likely an increased potential for marine mammal bycatch, including species other than northern elephant seals, some of which may be endangered species, such as sperm, fin or humpback whales.
- Applicants are seeking authority to fish in areas outside those previously authorized, and, therefore, the bycatch rate could differ substantially from that recorded during previous fishing activities.

- Two applicants are requesting authority to use “linked buoy gear,” a new DSBG configuration. Because this gear configuration is untested and its bycatch potential is unknown, it may be necessary to institute a separate observer protocol and coverage level for the new gear configuration.
- Will the observer coverage levels required by NMFS be based on a quantitative analysis, and will those levels provide sufficient information to distinguish between bycatch rates that are above or below PBR?
- Each vessel will be required to remain within a specified distance of all of its deployed gear, so that gear strikes by fish or marine mammals can be detected quickly with the use of binoculars or other optical instruments, and bycaught marine mammals removed quickly and safely before they are seriously injured or die. Strike-detection distances will depend on factors such as the height and appearance of the strike indicators, the height of the deck from which observations are made, the power and quality of the optics being used, and the sea state and atmospheric conditions. Thus, it is unclear whether the three nautical mile distance proposed by the Council will be sufficient in all instances. How will NMFS select a monitoring distance that provides reasonable assurance that strike or entanglement events are detected and responded to quickly under all fishing conditions?
- If a marine mammal is hooked or entangled, breaks free or is cut free, and is subsequently sighted or found dead, then understanding how the animal was caught or entangled will depend in part on knowing where and when the interaction happened. Obtaining such information will usually depend on having unique gear markings that can be detected, identified, and distinguished from one another. Does NMFS intend to require the use of unique identification markings of a sufficient size to be identified at a distance (by whale disentanglement teams, for example), and that such markings be placed on all parts of the gear that might remain on the animal when it is sighted or found?

Thank you for the opportunity to raise these questions and provide these comments. If you or your staff has any questions, please let me know.

Sincerely,



Rebecca J. Lent, Ph.D.,
Executive Director