UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
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MEMORANDUM FOR: The Record
AR150413SWR2007SF00265

NOV 29 2007

FROM: Rodney R. McInnis
Regional Administrator

SUBJECT: Finding of no significant impact for the issuance of a shallow-set longline Exempted Fishing Permit for U.S. West Coast fisherman Pete Dupuy under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP).

Based on the subject environmental assessment (EA), I have determined that no significant environmental impacts would result from the proposed action.

Summary

The issuance of the Exempted Fishing Permit (EFP) would authorize a single U.S. West Coast-based longline vessel to conduct exploratory shallow-set longline fishing utilizing new and innovative gear consisting of large circle hooks and mackerel, or mackerel-type, bait used to target swordfish. The new gear has proven successful in several domestic and international longline fisheries in dramatically increasing survivorship of incidentally captured and released marine animals including, among others, sea turtles and sharks, two species of concern in regards to the potential impacts of the proposed EFP. The terms and conditions of the EFP include, among other things, 100 percent observer coverage, a maximum effort cap of 67,200 hooks, and conservative take caps for the protection of endangered sea turtles and species of concern, such as marine mammals and striped marlin. If the take or effort caps are reached, the EFP would terminate immediately.

National Oceanic and Atmospheric Administration Administrative Order 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. '1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQs context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

Response: Fishing mortality by the single vessel that would be authorized to fish under the EFP represents a very minor proportion of total fishing mortality on the swordfish population, the target species. Swordfish catches by all vessels in the Eastern Pacific Ocean (EPO) during the years 2001-2005 were 13,000–20,000 metric tons (mt) annually (PFMC 2006; IATTC 2006). The U.S. West Coast catch has averaged 1,500 mt over the same period, while according to the EFP application, catches under this EFP would be 7–18 mt (15,000–40,000 lb). Summary impacts of effects of the proposed alternatives on the target stock are presented in chapter 4 of the EA.

If fishing under the EFP is conducted, it could form the basis for future EFPs until enough information had been gathered to determine whether a regulatory change to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species was justified. Any future fishing activities of this nature would be subject to additional rigorous environmental review to evaluate potential effects, including those on the target species. Therefore, it is reasonable to conclude that granting the EFP for a single vessel with explicit effort controls and protected species catch caps, would not have a significant effect on target species.

2) Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?

Response: The issuance of the EFP is not expected to jeopardize the sustainability of non-target finfish populations affected by the action. NMFS observer records from Hawaii (February 1994–December 2001; April 2004-April 2006) and California-based shallow-set longline fisheries (October 2001–February 2004) were tabulated in the environmental assessment (EA) with estimates presented as a proxy for catch rates of major non-target species. The potentially affected non-target species include, among others, blue and mako sharks, and albacore and bigeye tuna. The most recent stock assessment carried out for regional blue shark populations did not indicate a pressing resource conservation issue for this species. NMFS observer records indicate that, when utilizing circle hooks and mackerel, or mackerel-type bait, approximately 98 percent of captured blue sharks are released alive. The estimated catch for mako shark is within the HMS FMP established 150 mt harvest guideline for this species. The projected catches in numbers for albacore and bigeye tuna under the maximum effort cap of 67,200 hooks are 71 and 105. Most of the tuna catch in other longline fisheries is landed and sold as a high value incidental catch, therefore it is likely that any incidental catch of tuna during fishing operations authorized by this EFP would also be landed and sold. Tuna populations are being managed domestically through the HMS FMP and regionally through the Inter-American Tropical Tuna Commission (IATTC). The IATTC recently passed a Resolution for the Conservation of North Pacific Albacore Tuna requesting member nations, including the United States, to cap current fishing effort for those fleets that target albacore tuna. Tuna are not a target species for the shallow-set pelagic longline fishery. The limited amount of tuna catch projected for the EFP would not create a

resource conservation concern or circumvent the intent of the IATTC resolution. Bigeye tuna stocks in the EPO have been declared overfished and a quota on longline captured bigeye tuna is in place as part of the conservation measure adopted by the IATTC, and implemented by NMFS through the Tuna Conventions Act. The current annual quota is set at 500 mt for the U.S. Pacific longline fleet. Captures made pursuant to this EFP would have to adhere to the quota management system in place. If the quota is reached, U.S. longline fishing vessels targeting bigeye tuna would cease fishing for the remainder of the calendar year.

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs?

Response: Pelagic longline fishing operations deploy fishing gear in open water between the surface and bottom of the ocean. No fishing would be allowed within 40 nautical miles of the coast. Environmental safeguards are built into the EFP alternatives to reduce the risk of harm to populations of protected species which migrate across the boundary between coastal and EEZ habitats. For these reasons, it is unlikely that the proposed action would cause substantial damage to shared protected species stocks, habitats or EFH. A detailed assessment of the potential impacts of the three action alternatives on finfish, protected species and seabirds can be found in sections 4.3, 4.4 and 4.5 of the EA.

Given the limited scope and duration of the proposed action coupled with the strict terms and conditions that would be applied, the proposed action is not expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act. It was determined that some of the non-target species associated with the proposed action are considered EFH for the various federally managed species within the HMS FMP. Therefore, the potential reduction in quantity of prey species would adversely affect EFH for certain species in the HMS FMP, albeit it very minor quantities relative to the prey species populations as a whole. Although the removal of prey species would adversely affect EFH, NMFS finds that the proposed action contains adequate measures to avoid, minimize, mitigate, or otherwise offset the adverse effects to EFH. The Determination on this finding was prepared by the NMFS Habitat Conservation Division and submitted on November 28, 2007.

4) Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?

Response: The proposed action involves one fishing vessel fishing in open waters off California and Oregon. There are no public health implications involved. Since substantial adverse impacts on public health or safety are not expected, they were not further evaluated in the EA. There is an active longline fishery that operates in the high seas area adjacent to the action area for the proposed EFP without any substantial adverse impact on public health or safety. Similar gear and techniques would be employed by the EFP fishing inside the action area with no substantial adverse impact on public health or safety expected.

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

Longline gear is known to incidentally catch and entangle threatened and endangered marine mammals, sea turtles, and seabirds. The EA evaluates impacts to ESA-listed species and their designated critical habitat, and marine mammals, which are protected under the MMPA. A detailed assessment of the potential impacts of the three action alternatives on finfish, protected species and seabirds can be found in sections 4.3, 4.4 and 4.5 of the EA.

Section 7 consultations were conducted on the proposed action to ensure that the action was consistent with the ESA. A formal section 7 consultation and a biological opinion were completed on November 28, 2007, as part of NMFS's intra-agency consultation on ESA listed species under the agency's jurisdiction. It was determined that leatherback sea turtles are likely to be taken during the proposed action; no other ESA-listed species were considered likely to be taken, so the consultation was limited to leatherback sea turtles. After reviewing the available scientific and commercial fisheries data, current status of the affected species, environmental baseline for the action area, effects of the proposed action and cumulative effects, NMFS determined that the level of leatherback sea turtle take anticipated through fishing operations authorized by the EFP is not likely to jeopardize the continued existence of the species. Thus, while individual leatherback sea turtles may be entangled or hooked on gear during fishing operations and the level of interactions may result in the mortality of up to one animal, this level of impact is not likely to adversely affect the population or the species. NMFS has determined that the agency's finding of no jeopardy is consistent with a NEPA determination of no significant impact. The U.S. Fish and Wildlife Service (USFWS) has made a determination that a formal consultation and preparation of a biological opinion is not necessary. The USFWS concurred with NMFS's determination in a letter to NMFS dated October 29, 2007, that the proposed EFP is not likely to adversely affect ESA-listed seabird species. There is no designated critical habitat within the proposed action area, so an analysis of adverse modification or destruction of critical habitat was not required.

A number of marine mammal species that are not listed on the ESA may be incidentally taken in the fishing operations authorized by the EFP. These species are identified in section 3.4 of the EA and effects of the takes are provided in section 4.4. Each marine mammal stock's current potential biological removal (PBR) level was used for determining whether anticipated takes were likely to be significant. If the level of serious injury or mortality of individual marine mammals anticipated under the proposed action resulted in a mean annual mortality, based upon the last five years, that exceeded the stock's PBR, then the action would be considered to have a significant impact on the stock. Based upon the PBRs in the 2006 U.S. Pacific Marine Mammal Stock Assessment reports and the anticipated levels of marine mammals taken, the proposed action is not likely to significantly impact any marine mammal stocks in the proposed area. Short-finned pilot whales currently have a low PBR, 1.2, and an estimated mean annual serious injury/mortality rate of 1.0. An interaction between the proposed fishing activity and a

short-finned pilot whale is considered very unlikely (as described in section 3.4). Nonetheless, a very precautionary approach to management has been taken by the Council and NMFS to ensure protection of this species and a cap of one short-finned pilot whale is included in the terms and conditions of the EFP. Limiting the level of short-finned pilot whale takes in this way ensures that the mean annual mortality/serious injury does not exceed the stock's current PBR.

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: The proposed action would potentially have a minor adverse effect on biodiversity and ecosystem function through the removal of target, non-target, and protected species. Fish removals under the proposed action would represent a very minor proportion of the total biomass of these species and would have a remote likelihood of adversely affecting biodiversity and ecosystem function. Potential removals of protected species are addressed under question five and impacts evaluated in detail in the EA are summarized in section 4.7. The major emphasis on the EFP is to collect preliminary data for management purposes. Given the limited amount of effort and the strict terms and conditions that will be applied, substantial impacts on biodiversity and/or ecosystem function within the affected area are not expected. The new and innovative gear allows for increased survivorship of non-target and some protected species of concern captured and released during the EFP, further mitigating any impacts on biodiversity and/or ecosystem function.

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: Prosecution of the EFP could generate revenue for the applicant over the short term, some of which would have community income inputs. A summary of the socioeconomic and environmental impacts of the three action alternatives can be found in section 4.7 of the EA. Depending on the port of offloading, the EFP could provide some limited economic gains to the port communities located within the action area. These gains may include, among other things, increases in landings and fuel, bait, ice, and equipment transactions.

8) Are the effects on the quality of the human environment likely to be highly controversial?

Response: The Pacific Council and NMFS have received a large volume of written and oral public comments opposing the proposed action, however the comments that contradict initial information presented by NMFS concern policy decisions by NMFS or very general information or factual claims not backed up by supporting documentation or citation, rather than on the data used in the EA. Public opposition stems primarily from the perception that longline gear is indiscriminate and will cause an increase in injury and mortality of protected species, particularly endangered leatherback sea turtles and

incidental take of some finfish species. Most of the disagreement centered on two main themes: 1) removal of any Pacific leatherbacks from the population would drive the species to extinction, and 2) longline gear results in high levels of marine mammal and sea turtle mortality. One letter was received that was signed by over 100 scientists opposing the SSLL EFP, but that letter also gave policy comments rather than providing contradictory information that is backed up by citation or supporting documentation. In virtually all of the public comment, the grounds for opposition were not presented in a manner, or with scientific citations, that presented any substantive "controversy" as to the underlying facts or conclusions, or any substantive information that could be used in the EA. The authors of the EA used the best available scientific information in developing the analysis of impacts, including species level impacts, of the proposed action. A small number of public comments provided substantive suggestions and data sources that could be utilized to improve the analysis. These were noted and integrated as appropriate. See section 4.7 for a summary of effects.

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

Response: This activity would occur in the marine environment and has little or no direct effect on the biophysical component of the terrestrial environment. No unique areas would be affected. Nothing has been identified in association with the EFP that would result in adverse effects to historical, archaeological, paleontological, or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas. The impacts of the proposed action on EFH were examined by NMFS and a determination of no significant adverse effect was made.

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: The risks are neither unique nor unknown; shallow-set longline fishing has previously occurred in the high seas area adjacent to the West Coast EEZ, out of Hawaii, and in the Atlantic, providing detailed information on possible catch and bycatch, and take of protected species. Actual catch or take rates within the EEZ may differ from what has been experienced outside the EEZ. Therefore, the risks are to some extent uncertain in terms of their intensity, although mitigation measures (such as limits on fishing effort and caps on protected species takes) would be expected to both reduce impacts and uncertainty about their intensity. In addition, the EFP terms and conditions would include 100 percent observer coverage for the duration of the EFP, thereby quantifying the exact level of bycatch encountered. There were no uncertain effects or unique or unknown risks identified during the development of alternatives for the proposed action, nor did any surface during preparation of the required environmental documentation.

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: The EA describes past and present activities that contribute to the kinds of impacts identified for the proposed action (e.g., fishing mortality and protected species takes). The proposed action will interact with target and non-target species that are taken in several other commercial and recreational fisheries, including the existing DGN fishery within the proposed action area, and the existing pelagic deep-set tuna longline fishery outside of the action area. These fisheries are regulated by state and/or federal management actions, including FMPs. The fisheries have been examined as part of the EA for this action to determine their impacts on target and non-target species interactions, and no cumulatively significant impacts have been identified.

12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: Nothing has been identified in association with the proposed action that would result in adverse effects to historic places eligible for the National Register, nor cause the destruction or loss of significant scientific, cultural or historical resources. As noted above, the primary adverse impact of the proposed action would be the removal of target and non-target finfish species, and the incidental take of protected species. To the extent these may be construed as scientific or cultural resources, the proposed action is not expected to result in a significant level of loss or destruction.

13) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: The proposed action does not involve the transport of non-indigenous species. The fishing vessel participating in the proposed action is located in a local port and would not increase the risk of introduction through ballast water or hull fouling. The EFP authorizes harvest of targeted swordfish, with incidental harvest of non-target species, all under very controlled conditions. Disposition of the catch does not include any translocation of living marine resources, nor use of any nonindigenous species as bait.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Response: The EFP is intended to gather information to preliminarily assess the commercial viability of new and innovative shallow-set longline fishing gear to target swordfish in the West Coast EEZ. The EA only covers an EFP for a single fishing season. If the EFP is conducted and determined successful, it could provide information to form the design and development of future EFP(s), with a larger number of vessels participating as part of an experimental sampling design approach (e.g., control groups, variables catered for) with the purpose of gathering enough information to determine whether a regulatory change to the HMS FMP is justified. Any future EFP proposals of this nature would be subject to review and recommendation for approval/disapproval by the Pacific Council following guidelines established in the Council's Operating Procedure #20 for HMS EFPs. Any potential future action would be evaluated in an EA

or EIS with separate decisions taken on proceeding at each step. For these reasons the action does not establish a precedent for future actions with significant effects nor does it represent a decision in principal about a future consideration.

15) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: Chapter 6 of the EA describes potentially applicable cross-cutting mandates and the proposed action would be implemented to comply with these laws and executive orders for the protection of the environment. The proposed action will not threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment. Per requirements codified at section 307(c)(3)(a) of the Coastal Zone Management Act, the EFP applicant will be submitting documentation, including this EA, at the California Coastal Commission's December 14, 2007, meeting to request a Consistency Certification (15 C.F.R. §D) for the proposed EFP.

16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: Any fishing results in cumulative effects to both target and non-target species. The objective of fishery management programs under the Magnuson Act is to authorize fishing that sustains the management unit species, and the marine environment, while avoiding or minimizing bycatch and bycatch mortality. The EFP would authorize limited and tightly controlled shallow-set longline fishing for the purpose of gathering information to assist NMFS and the Pacific Fishery Management Council in effectively managing HMS fisheries. Given the conservative terms and conditions that will be imposed on the EFP, the incremental effects of such a limited fishery would not result in cumulatively significant adverse effects to the sustainability of the targeted fishery resources and non-targeted species.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting environmental assessment and biological opinion prepared for the issuance of an EFP to Pete Dupuy for fishing under the West Coast Highly Migratory Species Fishery Management Plan, it is hereby determined that the issuance of the EFP will not significantly impact the quality of the human environment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

Rodney R McInnis

Regional Administrator, NOAA Fisheries,
Southwest Region

11-29-07

Date