

**Record of Decision for the Final Environmental Impact Statement on  
Amendment 6 to the Fishery Management Plan for West Coast Highly Migratory Species  
Fisheries: Authorization of Deep-set Buoy Gear**

**I. Introduction and Background**

This Record of Decision (ROD) was developed by the National Marine Fisheries Service (NMFS) in compliance with decision-making requirements, pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (40 CFR 1505.2). The purpose of this ROD is to document NMFS' decision regarding the project.

This ROD is designed to: (1) state NMFS' decision and present the rationale for that decision; (2) identify the alternatives considered in the final Environmental Impact Statement (EIS) in reaching the decision; and (3) state whether all practicable means to avoid or minimize environmental harm from implementation of the selected alternative have been adopted, and if not, why they were not (40 CFR 1505.2).

The Proposed Action is to identify deep-set buoy gear (DSBG) as a legal commercial fishing gear under the Fishery Management Plan for West Coast Highly Migratory Species Fisheries (HMS FMP) and pursuant regulations. This would allow fishermen to obtain federal permits to fish for swordfish using DSBG in Federal waters offshore of California and Oregon. To the extent that DSBG is economically viable, the Proposed Action would assist in supporting a fleet of West Coast vessels that could increase the availability of locally-caught swordfish in the market. This Proposed Action is intended to support a healthy domestic fishery with economic benefits for fishing communities, processors, restaurants, and consumers, while minimizing bycatch of protected species and non-target finfish.

**II. Alternatives Considered**

In addition to a no-action alternative, two action alternatives are considered, both of which are expected to have minimal impacts on non-target fish species and protected species in the Proposed Action Area. Alternative 1 is the no-action alternative. Alternative 2 is to authorize DSBG under an open access regime and includes specifications regarding gear description, gear tending, gear deployment and retrieval, use of multiple gear configurations on a single trip, permitting, fishing area and timing, species retention, and monitoring. Alternative 3—the preferred alternative for which NMFS is promulgating regulations—is to authorize DSBG under a limited entry permit program, including the same specifications as Alternative 2. Under Alternative 3, DSBG fishing would be authorized under a limited entry permitting scheme within the Southern California Bight (SCB), and allowed on an open access basis outside of the SCB in Federal waters off California and Oregon.



### **III. Public Involvement**

NMFS formally initiated environmental review of the project through a Notice of Intent (NOI) to prepare an EIS in the Federal Register on March 4, 2019 (84 FR 7323). This NOI announced a 30-day public scoping period, during which other agencies, tribes, and the public were invited to provide comments and suggestions regarding issues and alternatives to be included in the EIS. A Preliminary Draft EIS (PDEIS) was prepared and submitted to the September 2019 meeting of the Pacific Fishery Management Council (Council) to engage Council members and members of the public in discussions on the action alternatives and analytical methods to be employed. The PDEIS received broad support and resulted in Council selection of a final preferred alternative (i.e., Alternative 3).

A Draft EIS was subsequently produced and made available for a 45-day public comment period announced in the Federal Register on August 20, 2021 (86 FR 46847). During the comment period, three comment letters were received, two from environmental organizations engaged in the proposed action, and one from industry stakeholders who had been closely involved in early development and testing of DSBG. EPA also commented on the Draft EIS approving its distribution. Primary issues raised in the comments related to gear specifications and management measures, uncertainty in some of the analytical data and results, the economic prospects of DSBG authorization, and potential interactions with protected species. Section 1.7 of the Final EIS contains a summary of comments received on the Draft EIS and NMFS' responses. Section 1.6 of the Final EIS summarizes the changes that were made to the Draft EIS.

The Final EIS was subsequently announced in the Federal Register on March 3, 2023. During the review period, NMFS received one public comment that called for DSBG to be banned due to whale and dolphin mortality. However, as no whale or dolphin interactions have been observed or reported in DSBG fishing to date, and given that impacts to these species are considered unlikely to adversely affect the species in both the Final EIS analysis and related Endangered Species Act (ESA) Section 7 consultation, we consider this comment outside the scope of this action.

### **IV. Environmentally Preferable Alternative(s)**

Alternative 1 (No Action) would cause the least impact of the alternatives considered to the biological environment of the action area. Both Alternative 2 (Open Access) and Alternative 3 (Limited Entry) would likely result in an increase in swordfish harvest, and some infrequent bycatch of non-target finfish, particularly bigeye thresher sharks. However, the analyses in the Final EIS indicate that biological impacts to non-target species are likely to be minor, and the economic effects of the action are expected to be positive. Due to the limited entry permitting scheme of Alternative 3, which restricts DSBG fishing in the Southern California Bight to active permit holders phased in over a twelve-year period, Alternative 3 is the less biologically impactful of the two action alternatives.

## **V. Results of Consultations**

NMFS carried out an informal ESA Section 7 consultation with its Protected Resources Division (PRD) beginning in October 2021. This consultation found that the proposed action may affect, but is not likely to adversely affect, ESA-listed protected species in the action area. No effect on critical habitat or essential fish habitat is expected. During this consultation, PRD identified some changes to species designations (i.e., whether or not a given species may be affected by the proposed action) from those represented in the Draft EIS. These refined designations were incorporated into the Final EIS as well as the final Letter of Concurrence on the Proposed Action. NMFS also made a determination in February 2023 that the action will have no effect on seabirds.

NMFS sent letters to coastal zone management offices of California and Oregon, pursuant to the Coastal Zone Management Act (CZMA). No issues were raised related to CZMA by California and Oregon and concurrence is inferred.

## **VI. Mitigation and Monitoring**

This action minimizes environmental impacts through the design of the gear and the mitigation measures in place to minimize the likelihood and severity of any potential interaction with protected or non-target species. Such measures include setting the hooks deeper than the typical range of ESA-listed marine mammals and sea turtles, setting and retrieving the gear quickly, maintaining streamlined configurations including taut lines, using a strike indicator allowing for immediate service of the gear when fish or protected species are hooked, and active gear tending to allow for immediate action if any species became hooked or entangled in the gear. Data have consistently shown that DSBG has lower bycatch potential than other commercial gears targeting swordfish such as drift gillnets and pelagic longlines.

NMFS will monitor the authorized DSBG fishery through a combination of observer coverage and logbook requirements to ensure that environmental impacts are minimal. The selection of Alternative 3, with its limited entry permitting program, allows for a phased-in approach over a twelve-year period wherein a steady increase in DSBG fishing effort can be monitored and any unexpected impacts addressed as they arise. Permit issuance will be prioritized based on experience fishing DSBG and other commercial swordfish gears. This permitting program, and the permitting scheme under the HMS FMP in general, provides NMFS with broad authority to enforce management measures and gear requirements that minimize the potential for negative environmental impacts of DSBG fishing.

## **VII. Decision and Rationale for Decision**

NMFS is choosing to implement Alternative 3 as it is the least biologically impactful of the action alternatives, while still producing economic benefits through an increase in domestic swordfish supply. The biological analysis described in the EIS suggests that DSBG is a highly selective fishing gear—the large majority of catch is expected to consist of swordfish. The most frequently caught species other than swordfish is the bigeye thresher shark, and it has shown to generally survive capture; other species are caught so infrequently that any impacts at the population level are highly unlikely. No protected species mortalities have been observed or reported in DSBG fishing trials to date, and the gear specifications include many management measures intended to minimize the likelihood of interacting with or injuring a protected species.

Through the EIS and the documentation in this ROD, NMFS considered the objectives of the proposed action and analyzed a reasonable range of alternatives that adequately address the objectives of the proposed action, and the extent to which the impacts of the action could be mitigated. NMFS also considered public and agency comments received during the EIS scoping and review periods. In balancing the projected effects of the various alternatives presented in the EIS and the public interest with economic and technical considerations, NOAA statutory mandates, and matters of national policy, NMFS has decided to implement Alternative 3 and authorize a limited entry DSBG fishery. Consequently, NMFS concludes that the approved alternative provides reasonable, practical, and practicable means to avoid, minimize, or compensate for environmental harm from the action.

 April 6, 2023

West Coast Region  
National Marine Fisheries Service