submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*M. Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 7, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 7, 2020.

**Kenley McQueen,**

*Regional Administrator, Region 6.*

[FR Doc. 2020–01477 Filed 2–6–20; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 200204–0041]**

**RIN 0648–BJ58**

## Fisheries off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Protected Species Hard Caps for the California/Oregon Large-Mesh Drift Gillnet Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; request for comments.

**SUMMARY:** NMFS is publishing regulations under the authority of Section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement an immediate closure of the California/Oregon drift gillnet (DGN) fishery for swordfish and thresher shark (14 inch (36 cm) minimum mesh size) if a hard cap (*i.e.,* limit) on mortality/injury is met or exceeded for certain protected species during a rolling 2-year period. The length of the closure will be dependent on when the hard cap is reached. The implementation of hard caps is intended to manage the fishery under the MSA to protect certain non-target species. The publication of this final rule is necessary to comply with a court order issued January 8, 2020, as further described in **SUPPLEMENTARY INFORMATION** below.

**DATES:** The final rule is effective March 9, 2020. Comments on the final rule and supporting documents must be submitted in writing by March 23, 2020.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2016–0123, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov/docket?D=NOAA-NMFS-2016-0123,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Lyle Enriquez, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2016–0123'' in the comments.

*Instructions:* Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the final Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and other supporting documents are available via the Federal eRulemaking Portal: *https://www.regulations.gov/docket?D=NOAA-NMFS-2016-0123* or by contacting Lyle Enriquez, NMFS West Coast Region, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or *Lyle.Enriquez@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Lyle Enriquez, NMFS, West Coast Region, 562–980–4025, or *Lyle.Enriquez@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The DGN fishery for swordfish and thresher shark (14 inch (36 cm) minimum mesh size) is federally managed under the Federal Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) and via regulations of the states of California and Oregon to conserve target and non-target stocks, including protected species that are incidentally captured. The HMS FMP was prepared by the Council and is implemented under the authority of the MSA by regulations at 50 CFR part 660.

The DGN fishery has been subject to a number of seasonal closures. Since 1982, it has been closed inside the entire U.S. West Coast exclusive economic zone (EEZ) from February 1 to April 30. In 1986, a closure was established within 75 miles (121 km) of the California mainland from June 1 through Aug 14 to conserve common thresher sharks; this closure was extended to include May in 1990 and later years. In 2001, NMFS implemented two Pacific sea turtle conservation areas on the U.S. West Coast with seasonal DGN restrictions to protect endangered leatherback and loggerhead sea turtles. The larger of the two closures spans the EEZ north of Point Conception, CA (34°27′ N latitude) to mid-Oregon (45° N latitude) and west to 129° W longitude. DGN fishing is prohibited annually within this conservation area from August 15 to November 15 to protect leatherback sea turtles. A smaller closure was implemented to protect Pacific loggerhead turtles from DGN gear from June 1—August 31 during a forecasted or occurring El Niño event, and is located south of Point Conception, CA, and east of 120° W longitude (72 FR 31756, June 8, 2007). The number of active vessels in the DGN fishery has remained under 50 vessels since 2003, with an average of 20 active vessels per year from 2010 through 2018.

NMFS' fleet-wide observer coverage target has been between 20 and 30 percent since 2013. Since some DGN vessels are unobservable due to safety or accommodations requirements, the observable vessels are observed at a rate higher than 30 percent to attain the fleet-wide 30 percent coverage. Four to six DGN vessels have been unobservable during each fishing season from 2011 to present.

**Council Background**

In March 2012, the Council tasked NMFS with determining the steps needed to implement protected species hard caps in the DGN fishery. Originally concerned with sea turtle interactions, the Council expanded its scope to include marine mammals at its June 2014 meeting. At that meeting, the Council directed its Highly Migratory Species Management Team (HMSMT) to begin developing a range of alternatives to establish hard caps on high-priority protected species (*i.e.,* sea turtles and marine mammals) incidentally caught in the DGN fishery. In September 2014, the Council selected a Range of Alternatives and Preliminary Preferred Alternative (PPA); however, the HMSMT identified implementation issues with the Council's PPA, and an additional PPA, identified as the California Department of Fish and Wildlife (CDFW) PPA, was selected in March 2015. In June, the Council added a 2-year hard cap sub-option to the Council hard cap PPA and the CDFW hard cap PPA. An additional alternative that modified the CDFW PPA was added in September 2015. This alternative contained 2-year rolling hard caps based on observed mortality/injury; the Council selected this alternative as its Final Preferred Alternative (FPA).

The proposed rule to implement this FPA was published in the **Federal Register** on October 13, 2016, following NMFS' determination that it was consistent with the fishery management plan, plan amendment, the MSA, and other applicable law. Following public comment on the proposed rule, NMFS conducted further analysis of the economic effects of the action. This new analysis identified significant adverse short-term economic effects that were not identified at the proposed rule stage. Citing inconsistency with the purpose and need for the action and MSA National Standard 7 (*i.e.,* conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication), NMFS withdrew the proposed rule on June 12, 2017. On July 12, 2017, an advocacy organization sued to compel publication of the proposed regulations, citing the theory that NMFS' initial determination under MSA § 304(b)(1)(A) could not be reversed by a subsequent negative determination, namely that the proposed regulations did not comport with applicable law. On October 24, 2018, the United States District Court for the Central District of California found that since NMFS had not published the proposed regulations as-is nor consulted with the Council on revisions after making an initial determination under MSA § 304(b)(1)(A) that they were consistent with applicable law, NMFS had exceeded its authority under the MSA and the Administrative Procedure Act, and remanded to NMFS for further action.

On January 8, 2020, the Court ordered NMFS to publish a final rule for hard caps by February 7, 2020. The order also states that NMFS shall consult with the Pacific Fishery Management Council (Council) before making any revisions to the proposed regulations. Because the Council's next meeting is not until March 2020, NMFS does not have an opportunity to consult with the Council on revisions to the regulations before the Court's deadline. Therefore, NMFS is publishing the hard caps regulations as they were originally proposed, without changes to the regulatory text, in accord with the order. After publishing the rule, NMFS intends to review all options for addressing the economic impacts to DGN fishery participants through a separate rulemaking, beginning with engagement of the Council to propose revisions through the Council's normal process. NMFS is soliciting public comment on this final rule to gather information that can be used to develop such a separate rulemaking.

**Regulations for Hard Cap Limits**

The implementation of hard caps is intended to manage the fishery under the MSA to protect certain non-target species. Its purpose is not to manage marine mammal or endangered species populations, but rather to enhance the provisions of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) under MSA Section 303(b)(12) and National Standard 9. This final rule implements the Council's FPA, which establishes 2-year rolling hard caps on observed mortality and injury to fin, humpback, and sperm whales, leatherback, loggerhead, olive ridley, and green sea turtles, short-fin pilot whales, and bottlenose dolphins in the DGN fishery. The definition of injury is taken from the NMFS West Coast Region Observer Program field manual. Observers record protected species released as Alive, Injured, or Dead. Observer program staff review observer data forms and notes to make a final determination of the condition of entangled protected species. To determine whether a hard cap has been reached, NMFS will count observed mortalities and injuries to these species during the current DGN fishing season (May 1 through January 31) and the previous fishing season. If a cap is reached, the DGN fishery will close until the 2-year (*i.e.,* two fishing seasons) mortality and injury for all species falls below their hard cap value. The DGN fishery will then re-open on May 1 of the subsequent fishing season. The Council recommended hard cap values while DGN observer coverage is less than 75 percent; the Council will revisit hard cap values when observer coverage becomes greater than 75 percent.

TABLE 1—PROTECTED SPECIES HARD CAPS FOR DRIFT GILLNET FISHERY

| Species | Rolling 2-year hard cap |
|---|---|
| Fin Whale | 2 |
| Humpback Whale | 2 |
| Sperm Whale | 2 |
| Leatherback Sea Turtle | 2 |
| Loggerhead Sea Turtle | 2 |
| Olive Ridley Sea Turtle | 2 |
| Green Sea Turtle | 2 |
| Short-fin Pilot Whale (CA/OR/WA stock) | 4 |
| Bottlenose Dolphin (CA/OR/WA stock) | 4 |

**Fishery Closure Procedures**

NMFS will report observed protected species mortalities and injuries to help participants in the DGN fishery plan for the possibility of a hard cap being reached. If, as determined by NMFS, the DGN fleet meets or exceeds a hard cap, the fishery will be closed. Hard caps will be assessed over a rolling two-year period, by comparing the total number of mortalities and injuries during the current and previous fishing seasons to the hard caps. If a hard cap is reached or exceeded, the fishery will be closed until the two-year total of mortalities and injuries falls below the hard cap values for all species. Once the two-year total falls below the hard cap value for all species, the fishery will reopen on May 1 of the following fishing season. NMFS will publish a document in the **Federal Register** announcing the specified beginning and end dates of the closure. Upon the effective date identified in the **Federal Register** document, a DGN vessel may not be used to target, retain on board, transship, or land any additional fish

using DGN gear in the U.S. West Coast EEZ during the period specified in the announcement. Any fish already on board a DGN fishing vessel on the effective date may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, if they are landed within 4 days of the effective date. NMFS will notify vessel owners/operators of the closure by Vessel Monitoring System communication to the fleet stating when large-mesh drift gillnet fishing is closed. Notification will also be made by mail and a posting on the NMFS regional website.

**Public Comments and Responses**

NMFS received 20 comments, some of which included attachments and lists of signatories, during the comment period on the proposed rule. Of these, five comments supported the proposed rule as-is, nine supported the proposed rule and recommended additional or more stringent measures, five opposed the proposed rule entirely, and one opposed the proposed rule but recommended alternative approaches to regulating takes of non-target species by the DGN fishery. Major themes of the summarized comments and NMFS' responses are below.

**Theme 1: The Proposed Rule Would Cause Significant Economic Impacts to DGN Fishery Participants**

All six of the comments in opposition to the proposed rule, and one comment in support of the proposed rule, stated concerns that fishery closures resulting from hard caps on protected species takes would cause significant economic harm to DGN fishery participants, many of whom are dependent on the fishery for a significant portion of their annual income. Commenters expressed a desire for more detailed economic analysis of the potential effects of fishery closures under the proposed rule. One comment stated that closures resulting from the proposed rule would force seafood processors to increase their imports of foreign-caught swordfish, due to reductions in domestic supply. One comment which generally supported the proposed rule recommended NMFS establish a compensation program to remunerate fishers for lost income during a potential closure.

*Response:* Following public comment on the proposed rule and associated analyses, NMFS conducted further economic analysis that found significant short-term economic effects not identified at the proposed rule stage. While the DGN fishery is not expected to close often under the regulations, the adverse economic effects to DGN participants in the event of a closure would be significant. The final EA, FRFA, and RIR demonstrate that DGN participants are highly dependent on the fishery for their annual landings and revenue, and they have little opportunity to offset economic losses by participating in other existing fisheries during a DGN closure.

*Theme 2: Desire for More Stringent Hard Caps Than Those in the Proposed Rule*

Seven comments in support of the proposed rule expressed a desire for lower caps and/or a shorter management time horizon than the 2-year rolling hard caps outlined in the proposed rule. Of these comments, five recommended NMFS adopt Alternative 5 from the EA, which would establish one-year hard caps based on entanglements, rather than 2-year rolling hard caps based on mortality and serious injury (M&SI).

*Response:* The Council considered several other alternatives for this action. Descriptions of each of the alternatives are included in the EA and RIR. A rationale for why the other action alternatives were rejected is provided below.

Alternatives 1 through 4 presented significant challenges to implementation compared to the preferred alternative because they would use estimated M&SI based on observer coverage levels to evaluate the fishery against hard caps. The preferred alternative uses observed mortality and injury without the need to determine serious injury or to extrapolate data based on observer coverage in-season The current NMFS process under the MMPA for making M&SI determinations is an extensive and multi-step process that takes months to complete and occurs at the end of each calendar year. It was deemed that this process, therefore, would not be responsive enough to inseason interactions with protected species. NMFS would have to create an expedited M&SI assessment process to make a more timely determination, which would further delay this action. Additionally, observer coverage rates for the DGN fishery vary between and within fishing seasons. This makes it difficult to determine the coverage rate at the time an interaction occurs, thus influencing the hard cap limits. Similarly, using a generalized observer coverage rate is problematic because DGN vessels often participate in multiple fisheries based on environmental factors and the presence of different species. This adds to the variance in observer coverage levels over the course of a fishing season.

In response to the identified implementation issues, Council members developed Alternative 5 with two sub-Alternatives. Under Alternative 5 sub-option 1, the DGN fishery would be expected to meet or exceed a hard cap 7out of 13 fishing seasons, using historical observations (there is, however, less fishing effort in recent years, so the fishery is expected to close fewer than 7 times under this Alternative). Under Alternative 5 sub-option 2, the fishery would be expected to close in 14.6 percent of simulated seasons, with the possibility of closing for more than one full fishing season. The economic analysis showed that Alternative 5 would not be conducive to supporting an economically viable swordfish fishery.

Due to implementation issues identified with Alternatives 1 through 4, and the large decreases in effort, landings, revenue, and profits associated with Alternatives 5a and 5b, Alternative 6 was chosen as the preferred alternative. Alternative 6 was considered the least cost action alternative of those that did not present significant implementation issues.

*Theme 3: Need for Increased Observer Coverage*

Eight comments in support of the proposed rule expressed a desire to increase observer coverage in the DGN fishery, ideally to 100 percent. Commenters voiced concern that a hard caps regime with incomplete observer coverage may not adequately prevent takes of protected species. One comment in opposition to the proposed rule shared a similar concern, and recommended NMFS avoid the use of ratio estimates in determining total takes for the fishery under incomplete observer coverage.

*Response:* The Council developed the hard cap values based on less than 100 percent coverage, and indicated that they would revisit the values when observer coverage reaches 75 percent or greater in the DGN fishery. In 2015, the Council recommended increasing DGN monitoring to 100 percent using on-board observers or electronic monitoring. That action would be undertaken separately, and increased observer coverage was not a part of the proposed rule.

*Theme 4: The Proposed Rule Is Inconsistent With MSA National Standards*

Five comments opposed the proposed rule on the grounds that it is not consistent with the legal requirements outlined in the MSA National Standards. MSA National Standard 8 states that conservation and management measures shall ''provide

for the sustained participation of [fishing] communities,'' and ''minimize adverse economic impacts on such communities.'' Commenters expressed concern that fishery closures under the proposed rule would cause economic harm to fishery participants to a degree which could compromise the economic viability of the DGN fishery and preclude continued participation. Two commenters expressed additional concerns that the hard caps in the proposed rule are arbitrary, poorly defined, and not based on the best available science, therefore making them inconsistent with MSA National Standard 2.

*Response:* NMFS initially found the proposed rule consistent with MSA, its National Standards, and other applicable laws. Following public comment on the proposed rule, NMFS conducted additional economic analysis and found the regulations to be inconsistent with MSA National Standard 7 (*i.e.,* conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication). NMFS intends to review all options for addressing the economic impacts to DGN fishery participants through a separate rulemaking, beginning with engagement of the Council to propose revisions through the Council's normal process. Such a rulemaking would need to be consistent with the other MSA National Standards, including 2 and 8.

*Theme 5: The Proposed Rule is Unnecessary and Would Not Provide a Significant Benefit to Protected Species*

Two commenters opposed the proposed rule on the grounds that the recent levels of bycatch impacts by the DGN fishery do not warrant additional regulation under MSA. One commenter questioned why additional regulation under MSA is needed, given that management schemes for endangered species and marine mammals already exist under ESA and MMPA. This commenter expressed concern that the proposed rule would diminish the effectiveness of the existing take reduction team (TRT) process under MMPA, and recommended that NMFS instead consult with the Pacific Ocean Cetacean TRT on processes to improve performance of the DGN fishery.

*Response:* Take of ESA-listed species in the DGN fishery is currently within the values authorized by an Incidental Take Statement issued as part of a 2013 ESA Biological Opinion on DGN fishing activities. Take of all marine mammals in the DGN fishery is currently below their Potential Biological Removal levels under the MMPA. The Council recommended protected species hard caps for the DGN fishery to address MSA National Standard 9 and Section 303 of the MSA (*i.e.,* to minimize bycatch and bycatch mortality and conserve non-target species to the extent practicable).

*Theme 6: The Proposed Rule May or May Not Cause a ''Transfer Effect'' of Protected Species Bycatch*

Two comments in opposition to the proposed rule expressed a concern that closing the DGN fishery due to hard caps violations would result in increased effort by foreign fisheries with different management regimes and potentially greater bycatch impacts, a theory known as the ''transfer effect.'' One commenter in support of the proposed rule acknowledged and challenged this notion, claiming there is no evidence to suggest such a response by foreign fisheries to the level of effort by U.S. domestic fisheries.

*Response:* There may be a market substitute if fewer swordfish are caught by DGN gear. For example, the Hawaii longline fishery lands swordfish on the U.S. West Coast and the U.S. imports swordfish from foreign fisheries. If swordfish buyers on the U.S. West Coast increase their purchases of swordfish from sources with less bycatch, then there could be a minor beneficial impact to the environment. If buyers increase purchases of swordfish from sources with higher bycatch, increased negative effects to the environment would be expected. However, NMFS' analysis did not predict which source or sources would fill the market demand in order to attempt to quantify these effects.

**Classification**

NMFS' initial determination of consistency with National Standard 7 of the Magnuson-Stevens Fishery Conservation and Management Act, and related concerns arising after the publication of the proposed rule, are discussed above. The Administrator, West Coast Region, NMFS, determined that the rule is consistent with all other applicable laws.

There are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act (PRA), and existing collection-of-information requirements still apply under the following Control Number: 0648–0593. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid Office of Management and Budget control number.

NMFS prepared a final EA for this rule and concluded that there will be no significant impact on biological resources as a result of this action, based on the analysis contained in the EA. The action may result in significant adverse socioeconomic impacts in the event of a fishery closure. The action will have minor beneficial environmental impacts on target, not-target, and protected species and negative economic impacts to the DGN fleet. All of the proposed alternatives would result in a negative economic impact; however, the Council's final preferred alternative would result in a limited economic impact when compared to the other action alternatives (a more detailed explanation can be found in the FRFA). A copy of the final EA is available from NMFS (see **ADDRESSES**).

This rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016.

An initial regulatory flexibility analysis (IRFA) was prepared at the proposed rule stage, as required by section 603 of the RFA. This IRFA was finalized as an FRFA, recognizing significant adverse short-term economic effects that were not identified in the IRFA, on January 24, 2020. The FRFA describes the economic impact this final rule is expected to have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ).

There are currently 60 individual permit holders with valid Federal limited entry drift gillnet permits; however, many permits remain inactive. On average, 20 vessels participated in the fishery each year from 2010 through 2018. In 2018, 21 vessels participated in the fishery with total landings equaling 201 metric tons (mt) (round weight), about 10.1 mt on average per vessel. Total landings included 26 mt of common thresher shark, 11 mt of shortfin mako shark, 145 mt of swordfish, and 19 mt of tunas. All participants in the fishery are considered small businesses since average annual per vessel revenues persist well below the $11 million threshold.

The Council considered six alternatives for protected species hard caps for the DGN fishery before selecting Alternative 6 as their final preferred alternative. Compared to the baseline, the regulatory action (*i.e.,* based on Alternative 6) is expected to result in an ongoing $4,596 annual loss per vessel, based on a DGN fleet size of 20 vessels. These potential long-term adverse economic effects of the regulations appear to be limited. While the DGN fishery would not be expected to close often under the regulations, the short-term adverse economic effects to DGN participants in the event of any closure would be significant. The final EA, FRFA, and RIR demonstrate that DGN participants are highly dependent on the fishery for their annual landings and revenue and they have little opportunity to offset economic losses by participating in other fisheries during a DGN closure. If vessel operators are successful in reducing the frequency of hard cap species catch in the future, the DGN fishery would close less often. However, given the many existing regulatory measures to reduce protected species interactions in the DGN fishery to minimal levels, the degree to which further take reductions can be realized through fishermen's deliberate effort to avoid reaching caps cannot be determined. Alternative 6 is the least costly alternative that did not present significant implementation issues.

Action Alternatives 1 through 4 were estimated to produce fewer costs to the fleet than the FPA; however, these alternatives presented significant implementation challenges. The evaluation of the fishery against hard caps in each of these Alternatives was based on an estimated M&SI calculation derived from observer coverage levels. The current NMFS process under the MMPA for making M&SI determinations is an extensive and multi-step process that takes months to complete and occurs at the end of each calendar year. It was deemed that this process, therefore, would not be responsive enough to inseason interactions with protected species. NMFS would have to create an expedited M&SI assessment process to make a more timely determination, which would have further delayed this action. Additionally, observer coverage rates for the DGN fishery vary between and within fishing seasons. This makes it difficult to determine the coverage rate at the time an interaction occurs and then extrapolate observed M&SI for comparison to the hard caps. Similarly, using a generalized observer coverage rate is problematic because DGN vessels often participate in multiple fisheries based on environmental factors and the presence of different species. This adds to the variation in observer coverage levels over the course of a fishing season. Lastly, because fishing effort has been low compared to historical levels, a small change in observed fishing effort can have a significant effect on the observer coverage rate if unobserved effort does not change commensurately.

In response to the identified implementation issues with Alternatives 1 through 4, the CDFW proposed Alternative 5 with two sub-Alternatives. Based on Alternative 5 sub-option 1, the DGN fishery would be expected to meet or exceed a hard cap 7 out of 13 fishing seasons, using historical observations (there is, however, less fishing effort in recent years, so the fishery would be expected to close fewer than 7 times under this Alternative). Using Alternative 5 sub-option 2, the fishery would be expected to close in 14.6 percent of simulated seasons, with the possibility of closing for more than one full fishing season. The results of the economic analysis indicate that Alternative 5 would have greater economic impacts and not be conducive to supporting an economically viable swordfish fishery.

NMFS considers all entities subject to this action to be small entities as defined NMFS' size standards. The small entities that would be affected by the action are all U.S. commercial DGN vessels that may be used in the California/Oregon large-mesh DGN fishery. Because each affected vessel is a small business, the rule has an equal effect on all of these small entities. Therefore, the action will impact all these small entities in the same manner. This rule is anticipated to have a significant economic impact on a substantial number of small entities, or place small entities at a disadvantage to large entities.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Reporting, and recordkeeping requirements.

Dated: February 4, 2020.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.702, add the definition for ''Injury'' in alphabetical order to read as follows:

**§ 660.702 Definitions.**

* * * * *

*Injury,* when referring to marine mammals and sea turtles, means the animal has been released with obvious physical injury or with attached fishing gear.

* * * * *

■ 3. In § 660.705, add paragraphs (tt) and (uu) to read as follows:

**§ 660.705 Prohibitions.**

* * * * *

(tt) Fish with a large-mesh drift gillnet (mesh size ≥ 14 inches) in the U.S. West Coast Exclusive Economic Zone during the time the fishery is closed pursuant to § 660.713(h)(2)(ii).

(uu) Retain on board, transship, or land any fish caught with a large-mesh drift gillnet (mesh size ≥ 14 inches) later than 4 days after the effective date of a drift gillnet fishery closure and before the drift gillnet fishery re-opens pursuant to § 660.713(h)(2)(ii).

■ 4. In § 660.713, add paragraph (h) to read as follows:

**§ 660.713 Drift gillnet fishery.**

* * * * *

(h) *Limits on protected species mortalities and injuries.* (1) Maximum 2-year hard caps are established on the number of sea turtle and marine mammal mortalities and injuries that occur as a result of observed interactions with large-mesh drift gillnets (mesh size ≥ 14 inches) deployed by vessels registered for use under HMS permits. Mortalities and injuries during the current fishing season (May 1 through January 31) and the previous fishing season are counted towards the hard caps. The mortality and injury hard caps are as follows:

TABLE 1 TO PARAGRAPH (h)

| Species | Rolling 2-year hard cap |
|---|---|
| Fin Whale | 2 |
| Humpback Whale | 2 |
| Sperm Whale | 2 |
| Leatherback Sea Turtle | 2 |
| Loggerhead Sea Turtle | 2 |
| Olive Ridley Sea Turtle | 2 |
| Green Sea Turtle | 2 |
| Short-fin Pilot Whale (CA/OR/WA stock) | 4 |
| Bottlenose Dolphin (CA/OR/WA stock) | 4 |

(2) Upon determination by the Regional Administrator that, based on data from NMFS observers or a NMFS Electronic Monitoring program, the fishery has reached any of the protected species hard caps during a given 2-year period:

(i) As soon as practicable, the Regional Administrator will file for publication at the Office of the Federal Register a notification that the fishery has reached a protected species hard cap. The notification will include an advisement that the large-mesh drift gillnet (mesh size ≥ 14 inches) fishery shall be closed, and that drift gillnet fishing in the U.S. West Coast Exclusive Economic Zone by vessels registered for use under HMS permits will be prohibited beginning at a specified date and ending at a specified date. Drift gillnet fishing will then be allowed beginning May 1 of the year when observed mortality and injury of each species during the previous two May 1 through January 31 fishing seasons is below its hard cap value. Coincidental with the filing of the notification, the Regional Administrator will also provide actual notice that the large-mesh drift gillnet (mesh size ≥ 14 inches) fishery shall be closed, and that drift gillnet fishing in the U.S. West Coast Exclusive Economic Zone by vessels registered for use under HMS permits will be prohibited beginning at a specified date, to all holders of HMS permits with a drift gillnet endorsement via VMS communication, postal mail, and a posting on the NMFS regional website.

(ii) Beginning on the fishery closure date published in the **Federal Register** and indicated by the Regional Administrator in the notification provided to vessel operators and permit holders under paragraph (h)(2)(i) of this section, and until the specified ending date, the large-mesh drift gillnet (mesh size ≥ 14 inches) fishery shall be closed. During the closure period commercial fishing vessels registered for use under HMS permits may not be used to target, retain on board, transship, or land fish captured with a large-mesh drift gillnet (mesh size ≥ 14 inches), with the exception that any fish already on board a fishing vessel on the effective date of the document may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided such fish are landed within 4 days after the effective date published in the fishing closure document.

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