

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 031125294-4091-02]

RIN 0648-XD945

Fisheries Off West Coast States; the Highly Migratory Species Fishery; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting fishing with large-mesh drift gillnet (DGN) gear (≥ 14 inches mesh) off the coast of southern California east of 120° W. meridian from the effective date of this rule through August 31, 2015. This prohibition is based on the Assistant Administrator for Fisheries' (AA) determination that El Niño conditions are occurring off the coast of southern California. This action protects Endangered Species Act (ESA)-listed loggerhead sea turtles (*Caretta caretta*), specifically the endangered North Pacific Ocean Distinct Population Segment.

DATES: Effective 12:01 a.m. Pacific Daylight Time (PDT), May 29, 2015, through 11:59 p.m. PDT, August 31, 2015.

FOR FURTHER INFORMATION CONTACT: Lyle Enriquez, West Coast Region (WCR), NMFS, (562) 980-4025, lyle.enriquez@noaa.gov.

SUPPLEMENTARY INFORMATION: The DGN fishery is managed under the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS) (50 CFR part 660, subpart K). The fishery occurs off the coast of California. The regulations provide that "No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. meridian from June 1 through August 31 during a forecasted, or occurring, El Niño event off the coast of southern California" (50 CFR 660.713(c)(2)). This area, which falls

within the Southern California Bight (SCB), is referred to in the regulations as the "Pacific loggerhead conservation area."

Under 50 CFR 660.713(c)(2)(ii), the AA relies on information developed by NOAA offices, such as the Climate Prediction Center (CPC) and the West Coast Office of the Coast Watch program to make the determination that an El Niño event is forecasted or occurring off southern California. The AA uses monthly sea surface temperature (SST) charts to determine whether there are warmer-than-normal SSTs off southern California "during the months prior to the closure months for years in which an El Niño event has been declared" by the CPC. Specifically, the AA uses SST data from the third and second months prior to the month of closure.

NMFS published these regulations to protect ESA-listed loggerhead sea turtles in accordance with a reasonable and prudent alternative (RPA) in NMFS's 2000 biological opinion on issuance of an incidental take permit for the DGN fishery under the Marine Mammal Protection Act. The biological opinion concluded that loggerhead bycatch in the DGN fishery was likely to jeopardize the continued existence of loggerhead sea turtles, and recommended adoption of a RPA under which the fishery would be closed in this area during the summer months when El Niño conditions are present to avoid the likelihood of jeopardy.

The CPC forecasts and declares when El Niño conditions exist based on conditions in equatorial waters, but does not forecast or declare when El Niño conditions exist off southern California. The Coast Watch program publishes maps of SST off the California coast through the Environmental Research Division's Data Access Program.

On March 5, 2015, the CPC issued an El Niño advisory, declaring that El Niño conditions were present in equatorial waters. Subsequent CPC updates on April 9, 2015, and May 14, 2015, stated that El Niño conditions remain in these waters. The May 14, 2015, update predicts that there is an approximately 90 percent chance that El Niño will continue through the northern hemisphere summer of 2015, and a

greater than 80 percent chance it will last through the end of 2015.

In May 2015, NMFS WCR staff reviewed the SST anomalies in the SCB during March and April of 2015, relying on SST maps available through NOAA's Coast Watch Program (for details see <http://coastwatch.pfeg.noaa.gov/erddap/index.html>). These maps indicated that SSTs were above normal in the SCB. WCR staff concluded that a determination of El Niño conditions off southern California is warranted based on SSTs that are warmer than normal during the third and second months prior to the month of the closure, consistent with regulations at 50 CFR 660.713(c)(2)(ii).

Classification

This action is required by regulations at 50 CFR 660.713 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the time-area closure of the DGN fishery. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the general requirement for a 30-day delay in effectiveness for this action. This measure is based upon the best available information and is necessary for the conservation of loggerhead sea turtles. The closure period anticipated by the regulation ends, at the latest, on August 31, 2015. A delay in effectiveness may allow the fishery to interact with and injure or kill loggerhead sea turtles that may occur within the SCB during the time period in which the regulation was intended to protect loggerheads.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 29, 2015.

Samuel D. Rauch III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

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