UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

SEP - 4 2013 150413SWR2013SF00016:MH

Via Certified Mail

NOTICE FOR VESSEL OWNERS/OPERATORS OF CALIFORNIA THRESHER SHARK/SWORDFISH DRIFT GILLNET (≥14in. mesh) FISHING VESSELS

This notice contains essential information for vessel owners or operators participating in the CA Thresher Shark/Swordfish Drift Gillnet (≥14in. mesh) Fishery.

Dear California Drift Gillnet Fishery Participant:

This letter is notification of emergency measures in the CA Thresher Shark/Swordfish Drift Gillnet (≥14in. mesh) Fishery effective September 4, 2013 through January 31, 2014 and of your obligation to carry observers on fishing trips as directed by NOAA's National Marine Fisheries Service (NMFS) or its designated contractor, Frank Orth & Associates.

This fishery is being observed under the following authorities: the Magnuson-Stevens Fishery Conservation and Management Act [50 CFR 660.719], and the Marine Mammal Protection Act [50 CFR 229.7].

Summary of Emergency Measures in Place September 4, 2013

NMFS recently issued temporary regulations (effective September 4, 2013 through January 31, 2014) under Section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to: 1) Immediately close the California thresher shark/swordfish drift gillnet (mesh size ≥ 14 inches) (DGN) fishery if one sperm whale is observed killed or seriously injured in DGN gear off California, and 2) require all DGN fishing vessels to carry a NMFS-trained observer in a 100% observer coverage area (Zone). The Zone covers nearly all areas in the U.S. exclusive economic zone (EEZ) deeper than the 1,100 fathom (fm) (2,012 meter (m)) depth contour. Furthermore, owners/operators of vessels intending to fish with DGN gear will be required to install, activate, carry, and operate a vessel monitoring system (VMS) prior to embarking on a DGN fishing trip during the effective period.

100 Percent Observer Coverage Zone

Drift gillnet (mesh size ≥ 14 inches) fishing without a NMFS-trained observer is prohibited in the portion of the California EEZ bounded by lines connecting, in order, the following points:

Point	North lat.	West long.	
A	42°0'0"	125°10'12'	Oregon Border at 1100 fm
B	40°22'12"	124°45'0"	
C	40°22'12"	125°45'0"	
D	38°21'0"	123°52'12"	
E	37°29'24"	123°18'0"	
F	37°29'24"	123°30'36"	
G	37°0'0"	123°30'0"	
H	36°36'0"	122°27'0"	
I	36°16'12"	122°31'12"	
J	35°52'30"	122°16'48"	
K	35°0'0"	121°45'0"	
L	34°54'0"	122°0'0"	
M	34°0'0"	122°0'0"	
N	34°0'0"	121°9'0"	
O	32°21'0"	120°0'0"	
P	31°6'0"	118°45'0"	
Q	30°32'31"	121°52'1"	SW corner of CA EEZ
R	EEZ Western Edge		200nm buffer from the U.S. Pacific Coast Shoreline
S	42°0'0"	129°0'0"	NW border of OR EEZ
A	42°0'0"	125°10'12'	Finish back at Point A

Pre-Trip Notification Requirement

The rule establishes a pre-trip notification requirement for **all DGN fishing trips**. This requirement will assist the observer provider in deploying observers to cover 100 percent of fishing effort in the Zone and ensure representative observer coverage of the DGN fleet outside of the Zone. DGN vessel owners/operators **are required to notify** the NMFS-designated observer provider **at least 48 hours prior to departing on all fishing trips**. Vessel owners/operators must provide their name, contact information, vessel name, port of departure, and estimated date and time of departure to the observer provider. Upon receipt of a pre-trip notification, the observer provider will notify the DGN vessel owner/operator whether their fishing trip has been selected for observer coverage. Frank Orth & Associates is the NMFS-

designated observer provider. Frank Orth & Associates will receive pre-trip notifications at (800) 522-7622 or (562) 427-1822. Pre-trip notifications must be made between 8:00 am and 5:00 pm Pacific time, Monday through Friday.

There are no exceptions to the pre-trip notification requirement. All vessels, observable and unobservable, must comply with this requirement. A vessel's observable status will be made on a trip-by-trip basis.

Any departure made without the 48 hour notification will be immediately referred to the NOAA Office of Law Enforcement.

Safety Requirements

Observers may not depart on a fishing trip aboard a vessel which does not comply with United States Coast Guard (USCG) safety requirements or that does not display a current Commercial Fishing Vessel Safety Examination decal [50 CFR §600.746(b)]. **All vessels carrying an Observer must meet USCG safety requirements and display a current safety decal.** Vessels that do not meet these requirements are deemed unsafe for purposes of carrying an observer and **must correct noted deficiencies prior to departing on a fishing trip** [50 CFR § 600.746(i)].

The vessel operator must allow an observer or NMFS representative to visually inspect any safety equipment or accommodation requirement if requested [50 CFR § 600.746(e)]. Observers, with the vessel operator, are required to complete a pre-trip safety check of the emergency equipment and review the emergency instructions prior to the vessel departing port.

I recommend that you schedule your USCG safety examination soon to allow enough time to prepare your safety gear and to receive your Commercial Fishing Vessel Safety Examination decal before an observer is assigned to your vessel.

If you have questions about these requirements or about the Observer Program, please call Lyle Enriquez at (562) 980-4025 or Charles Villafana at (562) 980-4033, or contact the Observer Program at: National Marine Fisheries Service, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802-4213.

Enclosures:

A. Federal Register Notice of Emergency Rule
B. Map of 100% Observer Coverage Area

Sincerely,

for William W. Stelle, Jr.
Acting Regional Administrator

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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FEDERAL REGISTER

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit; Fisheries Off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Sperm Whale Interaction Restriction; Final Rule and Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–BD57

[Docket No. 130802674–3749–01]

Fisheries Off West Coast States; Highly Migratory Fisheries; California Drift Gillnet Fishery; Sperm Whale Interaction Restriction

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: NMFS is issuing temporary regulations under the authority of Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to: implement an immediate closure of the California thresher shark/swordfish drift gillnet (mesh size ≥14 inches) (DGN) fishery if one sperm whale is observed killed or seriously injured in DGN gear off California, and require all DGN fishing vessels to carry a NMFS-trained observer from August 15, 2013 to January 31, 2014 in a 100% observer coverage area (Zone). The Zone covers nearly all areas in the U.S. exclusive economic zone (EEZ) deeper than the 1,100 fathoms (fm) (2,012 meters (m)) depth contour. Owners/operators of vessels intending to fish with DGN gear will be required to install, activate, carry and operate a vessel monitoring system (VMS) prior to embarking on a DGN fishing trip after the effective date of this rule.

DATES: This rule is effective September 4, 2013 through January 31, 2014. Comments must be received on or before October 4, 2013.

ADDRESSES: You may submit comments on the temporary rule, identified by NOAA–NMFS–2013–0131 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0131*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Fax:* 562–980–4047; Attention: Craig Heberer.
- *Mail:* Craig Heberer, Southwest Regional Office, NMFS, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802.

Instructions: 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 by NMFS. 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.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Requests for copies of documents supporting this rule may be obtained from the Southwest Regional Office, NMFS, 501 W Ocean Blvd., Ste. 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, telephone: 706–431–9440 (#303), fax: 562–980–4047, email: *craig.heberer@noaa.gov*.

SUPPLEMENTARY INFORMATION: The DGN fishery is managed under the Federal Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The HMS FMP was prepared by the Pacific Fishery Management Council (Council) and is implemented under the authority of the MSA by regulations at 50 CFR part 660.

Background

NMFS takes this action in accordance with the MSA, the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). The ESA requires the Federal government to protect and conserve species and populations that are endangered, or threatened with extinction, and to conserve the ecosystems on which these species depend. The MMPA prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and products into the United States. All marine mammals are protected under the MMPA.

During the 2010–2011 fishing season, a NMFS-trained observer recorded two sperm whales caught in the DGN fishery in U.S. Federal waters near the border with Mexico. One animal was dead when retrieved, the other was seriously injured. Sperm whales are listed as endangered under the ESA and are designated as depleted under the MMPA. In 2004, NMFS issued a biological opinion on the HMS FMP, including the DGN fishery, and an incidental take statement (ITS) for the FMP. The NMFS Sustainable Fisheries Division engaged in pre-consultation with the NMFS Protected Resources Division upon notice in June 2011 that the takes of two sperm whales during the 2010–2011 fishing season likely exceeded the ITS for the DGN fishery. As a result, consultation was reinitiated in July of 2012, with NMFS completing a biological assessment in September 2012 and a biological opinion in May 2013 (*http://swr.nmfs.noaa.gov/mm/Signed_DGN_BiOp_050213.pdf*) that included a new ITS pertaining to whale bycatch contingent on the issuance of a MMPA 101(a)(5)(E) permit.

The ESA exempts take of listed marine mammals through the issuance of an ITS only if such take is also permitted by section 101(a)(5)(E) of the MMPA. Without a permit under the MMPA, any incidental, but not intentional, take of ESA-listed marine mammals is not exempt from ESA Section 9 take prohibitions. The potential biological removal (PBR) is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. Given the determination that incidental takes of sperm whales by the DGN fishery during the 2010–2011 fishing season exceeded the PBR for the California-Oregon-Washington stock of sperm whales, the fishery, as currently configured, could not be issued an MMPA 101(a)(5)(E) permit. As a result, the ITS listed in the 2013 biological opinion for the DGN fishery would not exempt the fishery, as currently configured, from ESA Section 9. This situation also presents serious conservation and management problems in the fishery. If mortality and serious injury of the California-Oregon-Washington stock of sperm whales incidental to this fishery continues to exceed PBR, it could have a long-term adverse effect on the marine environment by preventing the California-Oregon-Washington stock of sperm whales from reaching their optimum sustainable population level and existing as a significant functioning element in the ecosystem.

Based on this information, NMFS is issuing short-term measures to reduce interactions with sperm whales during the 2013–14 fishing season in the DGN fishery. These measures for the 2013–2014 fishing season are needed to ensure that any serious injury or mortality to sperm whales in the DGN fishery does not exceed the PBR and to allow the provision of incidental take coverage under the ESA and MMPA for fishermen in the fishery. NMFS

currently has regulations addressing interactions with several species of marine mammals in the DGN fishery. The Pacific Offshore Cetacean Take Reduction Plan (Plan) at 50 CFR 229.31 includes measures (e.g., pingers, net extenders) to reduce serious injury and mortality of marine mammals in the fishery. NMFS reconvened the Pacific Offshore Take Reduction Team (Team) to recommend measures for the 2013–2014 fishing season that reduce risks to sperm whales, in light of their potential biological removal level and the fishery's 2010 takes, such that the negligible impact determination conditions of MMPA 101(a)(5)(E) could be met. The measures in this rule emerged from the two Team meetings that NMFS convened on July 31, 2013, and August 7, 2013 for the purpose of developing recommendations for reducing sperm whale mortality/serious injury in the DGN fishery to below PBR. NMFS intends to convene the Team later this year or in early 2014 to develop long-term measures for reducing sperm whale (and other strategic stocks, as appropriate) mortality and serious injury in the fishery. NMFS would then amend the Plan's regulations pursuant to Section 118 of the MMPA, and advise the Council should an amendment to the FMP be required.

Management Measures Established by This Temporary Rule

Consistent with ESA, MMPA, and MSA requirements, this rule will establish a fixed cap of one serious injury or mortality for sperm whales in the DGN fishery as determined by NMFS. If the cap is met, the DGN fishery will be closed for the remainder of the season (i.e., until January 31, 2014) consistent with this action being a short-term measure. The rule will also establish a "100 percent observer-coverage zone" (Zone) for the 2013–2014 DGN fishing season that is closed to DGN fishing unless the fishing vessel is carrying a NMFS-trained observer. This Zone is specifically defined by latitude and longitude coordinates set out at § 660.713 (f). The Zone covers nearly all areas of the U.S. EEZ that are deeper than the 1,100 fm (2,012 m) depth contour; however, the boundary lines that define the Zone close some areas that are deeper or shallower than the 1,100 fm depth contour. The Zone runs both north and south of Point Conception from the Oregon-California border to the Mexico-California border, generally along the 1,100 fm (2,012 m) depth contour, with the exception of an area seaward of the Santa Lucia Escarpment, and any canyons/basins shoreward of the main north-south 1,100 fm (2,012 m) depth contour (regardless of depth) to facilitate monitoring and enforcement. Vessels that are not carrying a NMFS-trained observer may not conduct DGN fishing in the Zone. Vessels not carrying observers will need to take precautions in setting and retrieving nets when fishing proximate to the Zone to ensure vessels remain shoreward of the boundary. This restriction is being implemented because NMFS long term survey data indicate that on average 90 percent of research vessel sightings of sperm whales in the California Current occurred in waters deeper than 2,000 m. Additionally, observer records indicate that only one interaction between the DGN fishery and sperm whales occurred in waters shallower than 1,100 fm since 1990; and this interaction was adjacent to the 1,100 fm depth contour.

Implementation

Vessel Monitoring System

Owners/operators of vessels intending to fish with large-mesh DGN gear will be required to have installed, activate, carry and operate vessel monitoring system (VMS) units that are type-approved by NMFS during the period of the DGN emergency rule. Owners and operators of vessels in the DGN fishery must: (1) Obtain a NOAA Office of Law Enforcement (OLE) type-approved mobile transceiver unit and have it installed on board the DGN fishing vessel in accordance with the instructions provided by NOAA OLE. You may obtain VMS installation and operation instructions from the NOAA OLE Northwest Division by calling 888–585–5518; and (2) activate the mobile transceiver unit, submit an activation report at least 72 hours prior to leaving port on a DGN fishing trip, and receive confirmation from NOAA OLE that the VMS transmissions are being received before participating in the DGN fishery. Instructions for submitting an activation report may be obtained from the NOAA, OLE Northwest Division office by calling 888–585–5518. An activation report must be submitted to NOAA OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may be used to fish in a fishery requiring the VMS.

Activation Reports

If you are a vessel owner who must use VMS and are activating a VMS transceiver unit for the first time or reactivating a VMS transceiver unit following a reinstallation of a mobile transceiver unit or change in service provider, you must fax NOAA OLE (206–526–6528) an activation report that includes: Vessel name; vessel owner's name, address and telephone number, vessel operator's name, address and telephone number, USCG vessel documentation number/state registration number; if applicable, the permit number the vessel is registered to; VMS transceiver unit manufacturer; VMS communications service provider; VMS transceiver identification; identification of the unit as primary or backup; and a statement signed and dated by the vessel owner confirming compliance with the installation procedures provided by NOAA OLE.

Transferring Ownership of VMS Unit

Ownership of the VMS transceiver unit may be transferred from one vessel owner to another vessel owner if all of the following documents are provided to NOAA OLE: A new activation report, which identifies that the transceiver unit was previously registered to another vessel; a notarized bill of sale showing proof of ownership of the VMS transceiver unit; and documentation from the communications service provider showing proof that the service agreement for the previous vessel was terminated and that a service agreement was established for the new vessel.

Transceiver Unit Operation

Operate and maintain the mobile transceiver unit in good working order continuously, 24 hours a day throughout the duration of the emergency rule. The mobile transceiver unit must transmit a signal accurately indicating the vessel's position at least once every hour, 24 hours a day, throughout the duration of the emergency rule. Once a vessel remains in port for seven days or more, position reporting is required at least once every four hours; however, the mobile transceiver unit must remain in continuous operation at all times. Once the vessel leaves port, the position reporting frequency must resume to at least once every hour, 24 hours a day.

When aware that transmission of automatic position reports has been interrupted, or when notified by NOAA OLE that automatic position reports are not being received, contact NOAA OLE by calling 888–585–5518 and follow the instructions provided. Such instructions may include manually communicating the vessel's position to NOAA OLE or returning to port until the VMS is operable.

After a fishing trip during which interruption of automatic position reports has occurred, replace or repair the mobile transceiver unit prior to the vessel's next fishing trip. Repair or

reinstallation of a mobile transceiver unit or installation of a replacement, including change of communications service provider, shall be in accordance with the instructions provided by NOAA OLE and require the same certification. Make the mobile transceiver units available for inspection by NOAA OLE personnel, USCG personnel, state enforcement personnel or any authorized officer. Ensure that the mobile transceiver unit is not tampered with, disabled, destroyed, operated, or maintained improperly. Pay all charges levied by the communication service provider as necessary to ensure continuous operation of the VMS transceiver units.

Declaration Reporting Requirements

The operator of any vessel fishing with large mesh DGN gear (mesh size ≥14 inches) for thresher shark/swordfish must provide NOAA OLE with a declaration report before the vessel leaves port on a trip in which the vessel is used to fish in U.S. ocean waters between 0 and 200 nm offshore of California. Gear code declarations are made by calling NOAA OLE NW Division at 888–585–5518.

The operator of a vessel fishing with DGN gear must provide a declaration report to NOAA OLE prior to leaving port on the first trip in which the vessel meets the requirement to install, activate, carry and operate a vessel monitoring system (VMS) unit. The vessel operator must send a new declaration report before leaving port on a trip in which a gear type that is different from the gear type most recently declared for the vessel will be used. A declaration report will be valid until another declaration report revising the existing gear declaration is received by NOAA OLE. During the period of time that a vessel has a valid declaration report on file with NOAA OLE, it cannot fish with a gear other than a gear type declared by the vessel. Declaration reports will include the vessel name and/or identification number, gear type to be used, and whether or not an observer will be present on the fishing trip. Upon receipt of a declaration report, NMFS will provide a confirmation code to confirm that a valid declaration report was received for the vessel. Vessel owners or operators must retain the confirmation code to verify that a valid declaration report was filed and the declaration requirement was met.

Vessels fishing with DGN gear may declare more than one gear type. If a vessel fishing with DGN gear has an observer on board, the vessel may fish with declared gear types seaward of the eastern boundary of the Zone (generally, in areas seaward of the 1,100 fm (2,012 m) depth contour). However, if a vessel fishing with DGN gear does not have an observer on board, the vessel may only fish with declared gear types shoreward of the eastern boundary of the Zone (generally, in areas shoreward of the 1,100 fm (2,012 m) depth contour. The following gear type declaration codes are available for the thresher shark/swordfish DGN fishery: Open access highly migratory species line gear (Gear Code 66 for Tuna); and other gear (Gear Code 69 for DGN or harpoon).

Pre-Trip Notification

This rule establishes a pre-trip notification requirement for all DGN fishing trips. This requirement will assist the observer provider in deploying observers to cover 100 percent of fishing effort in the Zone and ensure representative observer coverage of the DGN fleet outside of the Zone. DGN vessel owners/operators will be required to notify the NMFS-designated observer provider at least 48 hours prior to departing on all fishing trips. Vessel owners/operators must provide their name, contact information, vessel name, port of departure, and estimated date and time of departure to the observer provider. Upon receipt of a pre-trip notification, the observer provider will notify the DGN vessel owner/operator whether their fishing trip has been selected for observer coverage. Frank Orth & Associates is the NMFS-designated observer provider. Frank Orth & Associates will receive pre-trip notifications at (800) 522–7622 or (562) 427–1822. Pre-trip notifications must be made between 8:00 a.m. and 5:00 p.m. Pacific time, Monday through Friday.

Fishery Closure Procedures

In the event of a serious injury or mortality to a sperm whale, as determined by NMFS, during DGN fishing operations, the fishery will be closed through January 31, 2014. NMFS will notify vessel owners/operators of a DGN fishery closure by VMS communication to the fleet stating when nets may no longer be deployed. Notification will also be made in the Federal Register, by postal mail, and a posting on the NMFS regional Web site.

NMFS publishes this emergency action for implementing these short-term management measures for 180 days, the maximum allowed without an extension, under MSA. NMFS does not expect the Zone to adversely impact the DGN fleet, because vessels without observers have flexibility to fish shoreward of the eastern boundary of the Zone (roughly, the 1,100 fm (2,012 m) depth contour) to make up for lost fishing opportunities inside the Zone should an observer be unavailable.

NMFS' policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS' policy guidelines further provide that emergency action is justified for certain situations where it would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. NMFS has determined that the issue of setting a cap of one serious injury/mortality for sperm whales, the exclusion of DGN fishing in the Zone without observers, and the VMS requirement meets the three criteria for emergency action for the reasons outlined below.

The emergency results from recent, unforeseen events or recently discovered circumstances. NMFS' decision to not issue an MMPA 101(a)(5)(E) permit for sperm whales in the DGN fishery in its current configuration and close to the August 15 start date of the fishery in nearshore waters presents an unforeseen event and therefore warrants emergency action. The agency was poised to issue the permit prior to requesting public comments and then revised its anticipated course during the decision-making process based on new information that indicated that take of sperm whales in the fishery exceeded PBR.

This situation also presents serious conservation and management problems in the fishery. Serious injury or mortality of sperm whales at a level above PBR poses problems to the marine environment. Without issuance of a MMPA 101(a)(5)(E) permit, fishermen that incidentally seriously injure or kill any sperm whales during DGN fishing operations would not have incidental take coverage exempting the fishermen from take prohibitions under the ESA, predicated on MMPA requirements. This emergency action essentially establishes short-term measures for the

fishery, with the provision that one sperm whale interaction resulting from DGN fishing operations that has been determined by NMFS to be one serious injury or mortality would immediately close the fishery through January 31, 2014. Sperm whale interactions with the DGN fleet are rare, with sperm whale bycatch observed six times (10 animals) in over 8,300 net sets since 1990. According to NMFS' Southwest Fisheries Science Center (SWFSC) scientists, published data, and recorded depths of observed takes in the DGN fishery, sperm whales are more likely to occur in waters deeper than 1,100 fm (2,012 m). This emergency action would require 100 percent observer coverage of DGN vessels fishing in the Zone (generally, seaward of the 1,100 fm (2,012 m) depth contour running both north and south of Point Conception) and therefore, would increase the likelihood of observing any sperm whale interactions and determining the resulting condition of the animal.

The emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. The Team has the authority to develop management recommendations to NMFS to address sperm whale interactions, but this process would not promptly address sperm whale protection for the upcoming fishing season. There is no other action that NMFS can take through the normal rulemaking process that would enable the agency to implement the short-term management measures in time to reduce the risk of sperm whale mortality/serious injury in the DGN fishery to below PBR for the current DGN fishing season. An emergency action enables NMFS to monitor effort for the current fishing season in areas where sperm whales are most likely to occur. Therefore, the urgency to protect sperm whales through a final rule outweighs the value of providing prior public comment.

Classification

The Assistant Administrator for Fisheries, NOAA, (AA) has determined that this emergency action to promulgate temporary regulations under the authority of section 305(c) of the MSA is necessary to respond to efforts for reducing serious injury/mortality to sperm whales in the DGN fishery and is consistent with the MSA, ESA, MMPA, and other applicable laws. The rule may be extended for a period of not more than 186 days as provided under section 305(c)(3)(B) of the MSA.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds good cause to waive prior notice and opportunity for advanced public comment. Prior notice and opportunity for advanced public comment would be contrary to the public interest, as delaying action intended to reduce serious injury/mortality to sperm whales in the DGN fishery would increase the likelihood of exceeding PBR for the California-Oregon-Washington stock of sperm whales as established under the MMPA.

The AA finds good cause under 5 U.S.C. 553(b)(B) that it is contrary to the public interest and impracticable to provide for prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment contrary to the public interest.

Closing the exclusive economic zone off California to fishing in waters seaward of the 1,100 fm (2,012 m) depth contour to unobserved DGN vessels and setting a limit of one serious injury/mortality to sperm whales interacting with DGN gear provides for sperm whale protections. NMFS' long term research vessel sightings of sperm whales in the California Current indicate that 90 percent of sightings occurred in waters deeper than 1,100 fm (2,012 m). Further, NMFS' analyses of DGN observer data indicate that an average of approximately 13 percent of total annual DGN fishing occurred in the Zone in years 2009 through 2011. NMFS' SWFSC scientists have suggested that reducing spatial overlap of fishing effort and sperm whale habitat may be an effective means to reduce the risk of sperm whale bycatch. There is no action that NMFS can take through the normal rulemaking process that would enable NMFS to implement the requirement for observer monitoring of DGN vessels in the Zone and the cap of one sperm whale serious injury/mortality for the DGN fishery to reduce the bycatch risk of this species. This emergency action enables NMFS to keep the fishery operating while avoiding unnecessary adverse biological and economic impacts. Therefore, the urgency to protect sperm whales through a final rule outweighs the value of providing prior public comment. Although this action is being implemented without notice and request for advanced public comment, NMFS is seeking public comment on this rule for purposes of assessing the need to extend the rule or to identify other possible measures for long-term management.

For these same reasons stated above, pursuant to 5 U.S.C. 553(d)(3), the AA finds good cause to waive the full 30-day delay in effectiveness for this rule. It would be contrary to the public interest if this rule does not become effective immediately, because the DGN fishery prohibition to fish beyond of 75 nautical miles of shore is no longer in effect from August 15 through the following January 31 which coincides with swordfish becoming more prevalent in the California Current. Without this emergency rule, NMFS would not provide100 percent observer coverage in an area (the Zone) with higher concentrations of sperm whales and close the fishery in the event that there is one serious injury or mortality to a sperm whale in the DGN fishery. These measures are needed to provide adequate protections for sperm whales during the 2013–2014 DGN fishing season. For these reasons, there is good cause to waive the requirement for delayed effectiveness.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

This rule has been determined to be not significant for purposes of Executive Order 12866. A Regulatory Impact Review was completed and is available upon request from the NMFS, Southwest Region (see **ADDRESSES**).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 28, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the 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.*

■ 2. In § 660.713, paragraph (f) is added to read as follows:

§ 660.713 Drift gillnet fishery.

* * * * *

(f) *Sperm whale take mitigation measures.* (1) Drift gillnet (mesh size ≥14 inches) fishing without a NMFS-trained observer is prohibited in the portion of the California EEZ bounded by lines connecting, in order, the following points:

Point	North lat.	West long.	
A	42°0′0″	125°10′12′	Oregon Border at 1100 fm.
B	40°22′12″	124°45′0″	
C	40°22′12″	125°45′0″	
D	38°21′0″	123°52′12″	
E	37°29′24″	123°18′0″	
F	37°29′24″	123°30′36″	
G	37°0′0″	123°30′0″	
H	36°36′0″	122°27′0″	
I	36°16′12″	122°31′12″	
J	35°52′30″	122°16′48″	
K	35°0′0″	121°45′0″	
L	34°54′0″	122°0′0″	
M	34°0′0″	122°0′0″	
N	34°0′0″	121°9′0″	
O	32°21′0″	120°0′0″	
P	31°6′0″	118°45′0″	
Q	30°32′31″	121°52′1″	SW corner of CA EEZ.
R	EEZ Western Edge		200nm buffer from the U.S. Pacific Coast Shoreline.
S	42°0′0″	129°0′0″	NW border of OR EEZ.
A	42°0′0″	125°10′12′	Finish back at Point A.

(2) As soon as practicable following determination by the Regional Administrator that one serious injury to, or mortality of, a sperm whale has resulted from drift gillnet fishing during the period of this emergency rule, the Regional Administrator will contact the fleet via VMS communication and provide the effective date and time that all fishing by vessels registered for use under a drift gillnet permit are prohibited from swordfish fishing until January 31, 2014. Coincidental with the VMS communication, the Regional Administrator will also file a closure notice with the Office of the Federal Register for publication; notify all permit holders by postal mail, and a post a notice on the NMFS regional website.

(3) Drift gillnet vessel owners/operators are required to notify the NMFS-designated observer provider at least 48 hours prior to departing on all fishing trips. Vessel owners/operators must provide to the observer provider their name, contact information, vessel name, port of departure, and estimated date and time of departure, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(4) Drift gillnet vessel owners/operators must provide NOAA OLE with a declaration report before the vessel leaves port on a trip in which the vessel will be used to fish swordfish with drift gillnet gear in U.S. ocean waters between 0 and 200 nm offshore of California.

(5) Drift gillnet vessel owners are required to install a NMFS OLE type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to swordfish fishing during the period of this emergency rule. Vessel owners/operators shall perform the same requirements consistent with 50 CFR 660.14.

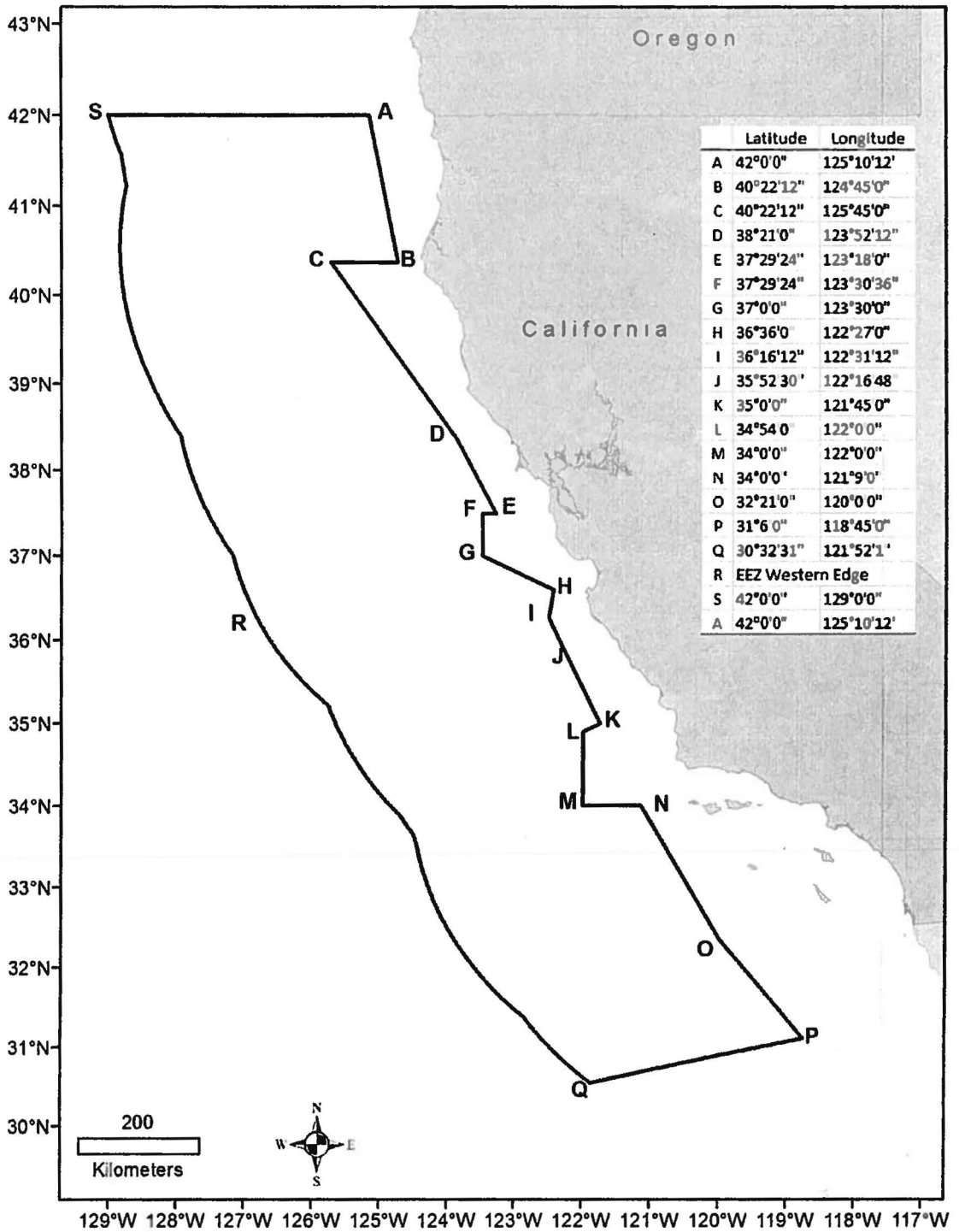
[FR Doc. 2013–21487 Filed 9–3–13; 8:45 am]

BILLING CODE 3510–22–P

100% Observer Coverage Zone

For CA Thresher Shark/Swordfish Drift Gillnet (≥14in. mesh) Fishery

Effective through January 31, 2014



	Latitude	Longitude
A	42°0'0"	125°10'12'
B	40°22'12"	124°45'0"
C	40°22'12"	125°45'0"
D	38°21'0"	123°52'12"
E	37°29'24"	123°18'0"
F	37°29'24"	123°30'36"
G	37°0'0"	123°30'0"
H	36°36'0	122°27'0"
I	36°16'12"	122°31'12"
J	35°52 30 '	122°16 48
K	35°0'0"	121°45 0"
L	34°54 0	122°0 0"
M	34°0'0"	122°0'0"
N	34°0'0 '	121°9'0'
O	32°21'0"	120°0 0"
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Q	30°32'31"	121°52'1 '
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