

Public Meeting

The Trustees have scheduled a public meeting for November 26, 2001, from 6:30 pm to 8:30 pm at the Unalaska City Hall, 43 Raven Way, Unalaska, Alaska. The purpose of this meeting will be to discuss the Draft RP/EA and solicit public comments.

Administrative Record

The Trustees have compiled a public record (Administrative Record) to support their restoration planning decisions and inform the public of the basis of their decisions. Additional information and documents, including public comments received on the Draft RP/EA, the Final RP/EA, and other related restoration planning documents, will also become a part of the Administrative Record, and will be submitted to a public repository upon their completion.

The documents comprising the public record (Administrative Record) can be viewed at the following locations: NOAA DANW, 7600 Sand Point Way, NE Seattle, Washington 98115, Contact Doug Helton at (206) 526-4563, or Doug.Helton@NOAA.GOV; The Qawalangin Tribe of Unalaska, 205 West Broadway, Unalaska, AK 99685, Contact Jacob Stepetin at (907-581-2920); and the U.S. Department of Justice, 801 B Street, Suite 504, Anchorage, Alaska 99501, Contact Lorraine Carter at 907-271-5452.

Dated: November 2, 2001.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 111201B]

Directed Economic Assistance Program; Establishment

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

ACTION: Notice of Direct Assistance Program

SUMMARY: The Consolidated Appropriations Act of 2001 makes \$3,000,000 available to the Secretary of Commerce to provide economic assistance to fishermen and fishing communities affected by Federal closures and fishing restrictions in the

Hawaii long line fishery. In furtherance of this directive, NOAA, NMFS, is establishing a direct economic assistance program (DEAP) to provide financial assistance to vessel owners that fished under a Hawaii longline limited access permit and harvested pelagic species in the Hawaii-based longline fishery between January 1, 1999, and November 29, 1999. This document announces the availability of assistance under the DEAP and the eligibility requirements.

DATES: Effective November 21, 2001.

ADDRESSES: Copies of the analysis used by NMFS to categorize vessels qualifying for the eligibility period as either "swordfish" or "tuna" fishing vessels are available from Dr. Charles Karnella, Administrator, Pacific Islands Area Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, Administrator, Pacific Islands Area Office (PIAO), NMFS, 808-973-2937.

SUPPLEMENTARY INFORMATION:**Background**

Section 208 of Appendix D of the Consolidated Appropriations Act, 2001 (Pub. L. 106-554, enacted December 21, 2000) makes available \$3,000,000 to the Secretary of Commerce: "...to provide economic assistance to fishermen and fishing communities affected by federal closures and fishing restrictions in the Hawaii long line fishery...." The Federal closures and fishing restrictions described began in late 1999 when vessels registered for use under Hawaii longline limited access permits (Hawaii-based longline vessels) were prohibited from engaging in fishing in certain accustomed areas and with certain gear. These restrictions were the result of injunctions issued by the U.S. District Court for the District of Hawaii (the Court) to reduce the number of sea turtles injured and killed incidental to fishing operations. Specifically, on February 24, 1999, Turtle Island Restoration Network and The Center for Marine Conservation filed *Center for Marine Conservation, et al. v. National Marine Fisheries Service, et al., Civil Action No. 99-00152(DAE)(CMC v. NMFS)*. The Court in *CMC v. NMFS* issued an order on October 18, 1999, determining that an injunction was warranted during the time that NMFS prepared an environmental impact statement (EIS). On November 23, 1999, the Court issued the first in a series of orders directing NMFS to impose certain restrictions on the fishery (Order Setting Terms of Injunction filed November 23, 1999, Order Amending

Order Setting Terms of Injunction filed January 11, 2000, Amended Order Modifying Provisions of Order of Injunction filed June 26, 2000, Order Clarifying Order Modifying Provisions of Order of Injunction filed June 26, 2000, Order Further Amending Order Modifying Provisions of Order of Injunction filed August 4, 2000, and Order Modifying Injunction filed March 30, 2001).

Additionally, while preparing the EIS, using revised methods adopted for estimating the fishery's impacts on sea turtles, NMFS learned that the longline fishery had taken more olive ridley turtles than anticipated in a biological opinion (BO) under the Endangered Species Act (ESA) issued in November of 1998. Therefore, on June 7, 2000, NMFS reinitiated consultation under section 7 of the ESA to reassess the fishery's impacts on all sea turtles and on March 29, 2001, NMFS issued a new BO that superceded the BO of November 1998. In the 2001 BO, NMFS determined that continued operation of the Hawaii-based longline fishery was likely to jeopardize the continued existence of leatherback, loggerhead, and green sea turtle populations. To avoid the likelihood of jeopardy, NMFS developed Reasonable and Prudent Alternatives (RPAs) to the management regime. The RPAs include seasonal closure of certain areas and a prohibition of swordfish style fishing (e.g., shallow longline sets, etc.) north of the equator. NMFS has implemented, by emergency rule at 66 FR 31561, June 12, 2001, measures that conform with that BO and comply with the most recent court order in *CMC v. NMFS* (March 30th Order). Background information on actions to implement the various orders in *CMC v. NMFS* is not repeated here; this information was published in several previous **Federal Register** documents (64 FR 72290, December 27, 1999; 65 FR 16346, March 28, 2000; 65 FR 37917, June 19, 2000; 65 FR 51992, August 25, 2000; 65 FR 66186, November 3, 2000; 66 FR 1110, February 22, 2001; and 66 FR 15358, March 19, 2001).

The June 12, 2001, emergency rule cited above eliminated the swordfish portion of the Hawaii longline fishery, and further, will close an area from 0°-15° north lat., between 145°-180° west long., approximately 1.9 million square miles, to the tuna component of the Hawaii longline fishery each April and May to protect sea turtles. These and previous closures have had, and will continue to have, adverse economic effects on the participants in the Hawaii-based longline fishery. For fiscal year 2001, Congress appropriated

\$3,000,000 to help offset some of these negative economic effects in order to assist the fishermen and fishing communities.

Direct Economic Assistance Program

NMFS is establishing a DEAP to provide financial assistance for owners of vessels registered for use under a Hawaii longline limited access permit and that operated that vessel in the fishery between January 1, 1999, and November 29, 1999 (inclusive). This January 1, 1999, through November 29, 1999, designated period of eligibility (eligibility period) includes all days in the 1999 fishing year up to and including the first business Monday after the Order Setting Terms of Injunction was filed on November 23, 1999 (November Order), in *CMC v. NMFS*. This was the first order directing NMFS to take management action restricting fishing operations of Hawaii longline limited access vessels.

Among other things, the November Order required that within 30 days of the order, NMFS shall prohibit all activities of the Hawaii longline fishery authorized by the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, as amended, within the area encompassed and bounded by the following description: North of 28° north lat. and between 168° and 150° west long. Subsequent Court orders mandated adjustments to time, area, and gear restrictions.

Eligibility

NMFS will provide direct financial assistance to vessel owners that were registered for use under a Hawaii longline limited access permit during the eligibility period of January 1, 1999, and November 29, 1999, so long as those vessels harvested and submitted to NMFS logbooks documenting the catch of Pacific pelagic management unit species (PMUS) during that eligibility period. To qualify for relief under the DEAP, an applicant must have (1) owned a vessel registered for use under a Hawaii longline limited access permit during the eligibility period, and (2) harvested PMUS using that vessel during the eligibility period as documented by logbooks timely submitted to NMFS.

For purposes of the DEAP, the definition of "owner" at 50 CFR 660.12 will be applied to determine ownership during the eligibility period. Under this definition, "owner" means a person who is identified as the owner of the vessel (during the period of eligibility) as described in the Certificate of Documentation (Form CG-1270) issued by the United States Coast Guard

(USCG) for a documented vessel, or in a registration certificate issued by a state, a territory, or the USCG for an undocumented vessel. Vessel ownership determinations will be solely based on these official vessel documentation records. For purposes of the DEAP, documentation of ownership transfers may include the Coast Guard documentation filing date. Corporate or partnership or shared ownership interest determinations will be based solely on information in the limited access permit records.

Vessel harvesting determinations for the Hawaii-based longline fishery during the eligibility period will be documented by and solely based upon existing Federal fishery records and databases. NMFS requires vessels to submit catch and effort logbooks (vessel logbooks) to document fishing activities and catch by species within 72 hours of each landing. The logbook database will be used by NMFS to determine which vessels participated in the Hawaii pelagic longline fishery during the eligibility period. Logbook submissions or corrections made after June 1, 2000, will not be accepted as a cure for missing or erroneous logbook submissions.

Based on logbooks, a total of 118 vessels have been identified by NMFS as submitting logbooks documenting the harvest of PMUS in the Hawaii-based longline fishery during this period. Therefore, the owners of these 118 vessels are eligible for financial assistance under this program.

Financial Assistance

Using the vessel logbook data base, NMFS conducted an analysis to categorize vessels qualifying for the eligibility period as either "swordfish" or "tuna" fishing vessels. Vessel harvesting activity during the eligibility period was categorized based on gear configurations and catch composition. Fifteen attributes for each qualifying vessel were reviewed, including the number of hooks per float, use of light sticks, bait employed, set time, target species, and fish kept. A copy of the analysis is available from the PIAO Administrator upon request at the address provided (see **ADDRESSES**). NMFS will allocate financial assistance to owners of "swordfish" vessels at a rate of two times that of owners of "tuna" vessels.

In the event ownership of a vessel qualifying for financial assistance changed during the eligibility period, NMFS will prorate the relief available per vessel and make a distribution based on the number of days of ownership within the eligibility period by each

respective owner. To address any disputed ownership claims, including claims of dual or multiple vessel owners, NMFS will request and consider information from the parties disputing ownership. If, after submission to NMFS and review of the additional information, the parties reach agreement on ownership, an agreement signed by affected parties will be submitted to NMFS and distribution will be based on that agreement. If agreement cannot be reached, NMFS will make a determination as to vessel ownership during the eligibility period on the sole basis of official vessel documentation records, including, for U.S. Coast Guard documentation, the date of filing.

In instances of dual or multiple ownership interests, distribution will be prorated based on percentage of ownership interest. Distributions to corporations will be to the corporation.

On September 21, 2001, NMFS sent a letter to owners of permitted vessels, identified as having fished (based on logbook data) during the eligibility period. The letters asked for confirmation of contact and permit information. NMFS then attempted to contact non-responding owners of vessels that fished under a Hawaii longline permit during the eligibility period. These efforts included inquiries through local fishing industry associations and the announcement through this public notice. The initial list of eligible vessel owners will be determined by NMFS from the available vessel logbook and permit data, and the analysis using gear configuration and catch composition. NMFS will send a letter to vessel owners indicating NMFS' initial decision on the eligibility, categorization, and the anticipated level of financial assistance within 30 days of the effective date of this document.

Review Process

A process for requesting review of claims for eligibility under the DEAP is available for up to 60 days after the effective date of this notice. During this review period, individuals or firms that believe they owned qualifying vessels active during the eligibility period, but that have not been contacted by NMFS for address confirmation, or disagree with an initial determination by NMFS, may contact the PIAO Administrator (see **ADDRESSES**) to document eligibility (e.g., ownership of a qualifying vessel during the eligibility period, or verification of a vessels' tuna or swordfish categorization). Applicants pursuing review must present written vessel logbook documentation that was filed in a timely manner in accordance

with NMFS regulations or USCG or state or territorial documents to support claims of eligibility. All relevant documentation must be sent via certified mail to the PIAO

Administrator's address and must be postmarked no later than 60 days after the effective date of this notice.

Upon receipt of a request for review, NMFS will complete a technical review of the information to determine eligibility no later than 90 days after the date of effectiveness of this notice. If, after review and consideration of the documentation provided during this technical review, NMFS verifies eligibility, NMFS will send a confirmation letter by certified mail to the owner of the vessel during the eligibility period, and NMFS records will be adjusted to reflect the eligibility determination. If, after technical review, NMFS is not able to verify eligibility, NMFS will refer the claim for eligibility for further review.

A final determination on the eligibility claim will be made by the Assistant Administrator for Fisheries, based on all relevant information provided by the applicant and the determination by the PIAO Administrator, no later than 140 days after the effective date of this Notice, and a determination letter will be sent by certified mail to the individual seeking review. The Assistant Administrator's determination is the final agency decision, and will be incorporated in NMFS records.

Other Requirements for Financial Assistance

An owner of an eligible vessel must be certified by NMFS, prior to distribution of any Federal funds, to ensure that the recipient does not have a delinquent Federal debt. If any Federal debt is identified, proof of payment must be made before funds will be disbursed. If an eligible owner has been found culpable of a violation of Federal natural resource laws, and has outstanding fines or penalties due and owing, proof of payment must be made before funds will be disbursed.

NMFS has determined that funds, if any, remaining after direct distribution to eligible vessels, less administrative cost, may be used by NMFS to fund protected species work shops and gear reconfiguration workshops for the Hawaii-based longline fishery. NMFS has determined that educational workshops will also ameliorate the economic impacts of Federal regulatory actions on the fishery. Further notification of these programs, if any, will be published in a separate announcement.

DEAP Implementation Plan

To assist fishermen and administer the DEAP in a rational and equitable manner, NMFS is basing eligibility for financial assistance on (1) ownership of a vessel, and (2) use of that vessel to harvest PMUS, during a designated eligibility period. Designation of the eligibility period, keyed to the dates described below, facilitates identification of qualifying vessels and owners. The start of the eligibility period, January 1, 1999, is the beginning of the fishing year in the calendar year that unanticipated litigation-driven, restrictive management adjustments were first implemented. The eligibility period ends November 29, 1999, the first business Monday after the November Order.

Following the November Order, the Hawaii-based longline fishery could be reasonably expected to anticipate restrictions on fishing activity. This eligibility period directs financial assistance to owners of vessels engaged in harvesting activity under a Hawaii longline limited access permit in the months immediately preceding the November Order. NMFS has concluded that this period of eligibility best defines a category of owners with demonstrated investment in participation in the fishery. Gearing up for and participating in the 1999 fishing year, prior to awareness of the restrictions imposed by the November Order, is a sign of commitment of resources. These fishery participants experienced unanticipated and serious business impairment and disruption as a result of the November Order and subsequent restrictive management actions. NMFS recognizes that operational and business decisions of owners with vessels active outside the eligibility period may have been affected by the litigation-driven management actions, and has determined that the financial assistance under this program is best focused on owners making business decisions and actively participating in the fishery in the 1999 fishing year through November 29, 1999.

NMFS has concluded that restrictions imposed on the fishery have had larger operational impacts on vessels targeting swordfish than on vessels targeting tunas. Further, swordfish vessels are anticipated to incur additional costs of \$12,000 - \$15,000 for outfitting for conversion to deep-set fishing activity. In response, NMFS is apportioning the assistance among eligible vessels to reflect this difference, and will allocate financial assistance to swordfish vessels at a rate of two times that of tuna vessels. To facilitate appropriate

compensation and implement the apportionment, NMFS is categorizing vessels, based on submitted vessel logbooks, as "tuna" or "swordfish" vessels.

Vessel ownership and activity determinations will be based upon vessel logbook information, permit information, or official Coast Guard, state, or territorial documentation.

Not Eligible for DEAP

Holding, by ownership or otherwise, of a Hawaii longline limited access permit, in and of itself, is not sufficient to qualify for financial assistance under the DEAP. Similarly, holding by ownership or otherwise, of a longline general permit, or longline general permit for a vessel registered under a Hawaii longline limited access permit used solely for transshipment of Pacific pelagic management unit species that were harvested with longline gear, in and of itself, is not sufficient to qualify for financial assistance under the DEAP.

Classification

Executive Order 12866

This notice has been determined to be "not significant" for purposes of Executive Order 12866, "Regulatory Planning and Review."

Administrative Procedure Act and Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice relating to public property, loans, grants benefits or contracts (5 U.S.C. 553(a)), a regulatory flexibility analysis is not required and has not been prepared for this notice.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Catalog of Federal Domestic Assistance

This is a new program and will be added to the Catalog of Federal Domestic Assistance # 11.452, Unallied Industry Projects.

Authority: Pub. L. 106-554.

Dated: November 15, 2001.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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