

STAFF SUMMARY FOR AUGUST 17, 2022

9. EXPERIMENTAL FISHING PERMIT APPLICATION**Today's Item**Information Action

Receive, consider, and potentially act on an application submitted by Nathan Perez, DFW's recommendations, and comments received for an experimental fishing permit (EFP) to test the commercial use of deep-set and night-set buoy gear fishing configurations within California state waters.

Summary of Previous/Future Actions

- DFW transmitted accepted EFP application to FGC May 16, 2022
- Published notice of receipt of EFP application May 20, 2022
- DFW transmitted recommendation for EFP application Jul 1, 2022
- Published notice of receipt of DFW recommendation Jul 15, 2022
- **Discuss and consider approving EFP application Aug 17, 2022; Loleta**

Background

The California Fisheries Innovation Act of 2018 (Chapter 477, Statutes of 2018) gives FGC the authority to approve EFPs for commercial or recreational marine fishing activities that would otherwise be prohibited, upon adopting regulations establishing an EFP program. Permits must be for one or more of the following purposes: research, education, limited testing, data collection, compensation fishing, conservation engineering, or exploratory fishing.

To establish an EFP program consistent with the new law, FGC adopted a new regulation in Section 91 — along with necessary amendments to existing regulations — which became effective on Apr 1, 2022. The regulations establish an expeditious process for considering and issuing EFPs, including direct application to DFW, public notice, DFW review and recommendation, and FGC receipt and potential approval of the EFP.

EFP Application Overview

On Apr 15, 2022, DFW received the first application for an EFP under the newly established program from Nathan Perez. The application (Exhibit 2) seeks an EFP to test the use of deep-set buoy gear (DSBG) and night-set buoy gear (NSBG) configurations to harvest swordfish, Pacific bluefin tuna, opah, common thresher shark and other highly migratory species in state waters, consistent with conditions of a federal EFP previously approved and tested in federal waters. The proposed project would extend testing of the gear types into state waters around the Channel Islands and southern California. During the day, DSBG would be deployed at 300 to 1,000 feet below the surface, in depths of 1,200 feet or greater. At night, NSBG would be deployed at 300 feet below the surface, in depths greater than 500 feet. Fishing trips are expected to range from four to eight days in length, with an estimated total number of fishing

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days between 50 to 100 days for DSBG and 70 days for NSBG. All proposed fishing activity would occur outside of marine protected areas.

After receiving the application and associated fee, DFW conducted a review within 30 days of receipt to determine whether to accept or reject the application, pursuant to subsection 91(d). On May 16, 2022, DFW transmitted the accepted EFP application to FGC via memo (Exhibit 1). FGC provided notice of receipt to interested parties on May 20, 2022. DFW concluded its technical review of the application and transmitted its recommendation to FGC on Jul 1, 2022 (exhibits 3 and 4). DFW recommends that FGC approve the EFP application with the special conditions listed on form DFW 1103 (Exhibit 4). If approved, the standard terms and special conditions will ensure marine resources are protected, pursuant to California Fish and Game Code Section 1022, and will allow DFW to adequately enforce the EFP. FGC provided notice of receipt of the DFW recommendation to interested parties on Jul 15, 2022.

At today's meeting, FGC is scheduled to publicly receive the EFP application, discuss the request and special conditions, and consider approving the application. DFW will provide an overview of the program, describe the specific EFP application, and explain its recommendations.

Significant Public Comments (N/A)

Recommendation

FGC staff: Approve the EFP application with special conditions as recommended by DFW.

DFW: Approve the EFP application with special conditions, as specified on form DFW 1103.

Exhibits

1. [DFW memo transmitting EFP application, received May 16, 2022](#)
2. [EFP Application #2022-01](#)
3. [DFW memo transmitting recommendation, standard terms, and proposed special conditions, received Jul 1, 2022](#)
4. [Form DFW 1103, including standard terms and proposed special conditions for the Perez EFP](#)
5. [DFW presentation](#)

Motion

Moved by _____ and seconded by _____ that the Commission **approves** EFP Application #2022-01 to test the commercial use of deep-set and night-set buoy gear fishing configurations within California state waters, with special conditions as reflected in Exhibit 4 and recommended by staff.

OR

Moved by _____ and seconded by _____ that the Commission **does not approve** EFP Application #2022-01 to test the commercial use of deep-set and night-set buoy gear fishing configurations within California state waters.

Memorandum

Date: May 16, 2022

To: Melissa Miller-Henson
Executive Director
California Fish and Game Commission

From: Craig Shuman, D. Env.
Marine Regional Manager

Subject: Transmittal of an Accepted Application for an Experimental Fishing Permit for Deep-Set and Night-Set Buoy Gear Fishing within California State Waters

The California Department of Fish and Wildlife (Department) has determined that the Experimental Fishing Permit (EFP) application packet from Nathan Perez for Deep-Set and Night-Set Buoy Gear Fishing within California State Waters is complete pursuant to subsection 91(d)(1), Title 14, California Code of Regulations (CCR) and, therefore, accepted for technical review.

The application seeks a Tier 3 (exploratory fishing) EFP to test the use of deep-set buoy gear (DSBG) and night-set buoy gear (NSBG) configurations to commercially harvest swordfish, Pacific bluefin tuna, opah, common thresher shark, and other highly migratory species (HMS) in specific areas within California state waters. To date, DSBG and NSBG fishing trails have occurred only in federal waters (3-200 nautical miles) off California under the federal exempted fishing permit (federal EFP) issued under the Magnuson-Stevens Act (50 CFR 600.745).

In accordance with subsection 91(d)(2), Title 14, CCR, the Department will develop and transmit a recommendation (including any permit special conditions) to the Fish and Game Commission (Commission) no later than 60 days from the date of this memo. If additional time is required for technical review, the Department will notify both the Commission and the applicant in writing of the reason for the time extension, pursuant to subsection 91(d)(3), Title 14, CCR.

Should you have any questions regarding the enclosed application or need additional information, please contact the EFP Coordinator at EFP@wildlife.ca.gov.

Enclosures

- 1) EFP Application Packet for Deep-Set and Night-Set Buoy Gear Fishing within California State Waters
- 2) CDFW Notice of an Accepted EFP Application dated May 16, 2022
- 3) Draft Public Notice of Commission Receipt of an Accepted Application

EXPERIMENTAL FISHING PERMIT SAMPLE APPLICATION PACKET

Applicants are responsible for submitting a complete written application packet containing all required elements specified in subsection 91(c)(2), Title 14, California Code of Regulations (CCR).

While applications for EFPs will be accepted in any written format, applicants are encouraged, but not required, to use and customize this sample packet to apply for an EFP. Applicants may also include additional information and/or supplementary materials (e.g., maps, diagrams, technical reports, letters of support, project budget and funding, or other supporting documents) with their application for review and consideration.

For further information on the EFP application procedures, please refer to Section 91, Title 14, CCR.

Applicants can visit [CDFW's EFP Program page](#) for more information on the EFP Program and useful tools and resources.

PROJECT TITLE: Deep-set and Night-set buoy gear fishing within California state waters

A. CONTACT INFORMATION

Provide contact information for key participants, including the applicant and, if applicable, the entity administrator and any authorized agent(s). If any key participant does not have a Get Outdoors ID (GO ID) or commercial fishing license (CFL) number, they must provide information for CDFW to create a new customer profile pursuant to subsection 91(c)(2)(A)(1), Title 14, CCR.

1. Applicant

Name	Nathan J. Perez
Title and Affiliation	
Mailing Address	[address omitted]
Email Address	[email omitted]
Telephone Number	[telephone number omitted]
GOID or CFL Number	[GOID/CFL number omitted]
If no GOID or CFL number:	Please provide the following information.
Residence Address (if different from mailing)	
Date of Birth	
Height	
Eye Color	
Hair Color	
Weight	
Gender	
Personal Identification	A copy of DMV ID, passport, military ID, or other acceptable form of identification as listed in <u>subsection 700.4(c), Title 14, CCR.</u>

2. Entity Administrator (if applicable)

Name	
Title and Affiliation	

Mailing Address	
Email Address	
Telephone Number	
GOID or CFL Number	
If no GOID or CFL number:	Please provide the following information.
Residence Address (if different from mailing)	
Date of Birth	
Height	
Eye Color	
Hair Color	
Weight	
Gender	
Personal Identification	A copy of DMV ID, passport, military ID, or other acceptable form of identification as listed in <u>subsection 700.4(c), Title 14, CCR.</u>

3. Authorized Agent(s) (if applicable)

Using the table below, complete a separate entry for each authorized agent.

Name	Thomas H. Carson
Title and Affiliation	
Mailing Address	[address omitted]
Email Address	[email omitted]
Telephone Number	[telephone number omitted]
GOID or CFL Number	[GOID/CFL number omitted]
If no GOID or CFL number:	Please provide the following information.
Residence Address (if different from mailing)	
Date of Birth	
Height	
Eye Color	
Hair Color	

Weight	
Gender	
Personal Identification	A copy of DMV ID, passport, military ID, or other acceptable form of identification as listed in <u>subsection 700.4(c), Title 14, CCR.</u>

B. STATEMENT OF PURPOSE

1. Describe the purpose and goals of the proposed project, including how the project meets or is consistent with the policies of [Fish and Game Code \(FGC\) Section 7050](#).

Commercial gears authorized for the take of highly migratory species are limited, especially for the take of swordfish. California state bill SB1017 is further reducing available gear types by sunseting the large-mesh drift gillnet (DGN) fishery, the only commercial gear type currently authorized capable of harvesting large amounts of swordfish. Deep-set buoy gear (DSBG; both standard buoy gear [SBG] and linked buoy gear [LBG]) was recommended to NMFS by the Pacific Fishery Management Council for authorization to harvest west coast swordfish outside of state waters after years of federal exempted fishery permit (EFP) trials. The gear has shown to be successful in catching swordfish with minimal non-target catch, protected species interactions, or lost gear. An additional federal EFP has been issued for testing night-set buoy gear (NSBG), a slightly modified version of DSBG fished at night at shallower depths outside of State waters.

This fishing activity conducted with DSBG and NSBG meets several of the policies under FGC Section 7050, including:

(b)(1) – conserving health and diversity. DSBG has lower non-target catch and bycatch than other commercial gears which target swordfish. This is beneficial to non-target/non-marketable species as interactions are minimal. Since DSBG fishing is actively tended, any catch which is not retained can be released quickly with minimal damage to the animal.

(b)(2) – allow and encourage activities that are sustainable. DSBG selectively targets species which have stable population levels and catches them in a way that is sustainable. Since the gear is actively tended, lost gear is minimal.

(b)(4) – recognize importance of sustainable commercial fishing to the economy. DSBG provides an innovative technique that will be economically viable if allowed to target productive areas in a sustainable manner.

2. Provide a list of proposed activities to be authorized under the EFP and justification for each activity.

Under this EFP, I would like to fish DSBG (both SBG and LBG) and NSBG within state waters in the following areas: 1) Mugu canyon, 2) Point Dume, 3) Palos Verdes, 4) Newport Beach to Dana Point, and around the Channel Islands (maps provided at end of application). These areas are within three miles (inside state waters) of the islands and mainland where the DGN and harpoon fleets have been very productive in years past. The conditions in these limited areas are ideal and have some of the best bottom contour and temperature breaks for fishing swordfish, as they are deep enough to attract swordfish. I believe they have great potential to be productive, while maintaining the same lack of undesired bycatch and interactions with protected species. The federal EFPs (along with the federal commercial fishery, once authorized by NMFS) only permit DSBG/NSBG fishing in federal waters (3-200nm). As stated in #1, above, DSBG has shown to have minimal interactions with protected species, low mortality of non-marketable species (as the gear is actively tended and unmarketable catch is able to be released quickly with minimal interaction and handling).

C. STATEMENT OF QUALIFICATIONS

Statement of qualifications must demonstrate ability of the key participants to perform the following duties and responsibilities.

1. Lead and provide supervisory oversight for all activities of the permit under the authorizations, standard terms, and special conditions.

For the last 7+ years I have worked as crew on and captained a vessel fishing DSBG and NSBG under a federal EFP. I have approximately 460 days of fishing experience with this gear (260 as captain, 200 as crew), no protected species interactions, and no lost gear (out of roughly 2,600 deployed pieces of DSBG/NSBG). Additionally, I have 20 years of commercial fishing experience in different fisheries such as DGN, gillnet, hook and line, lobster, crab, albacore troll, have captained several different vessels, and managed crews of 1-2 people.

2. Experience in identification, methods, and protocols specific to the requested species listed under [Section E.2.](#) of this document.

In my 20 years of commercial fishing experience, I have become proficient at identifying different fish species, safely handling both dead and live catch, and practicing safe release procedures for incidental live catch. I have participated in the federal protected species skipper workshop, as required by my federal EFPs.

3. Obtain all appropriate authorizations and oversee quality control measures to assure conformance to the specified standards or requirements (e.g., take appropriate measures to ensure, promote, and facilitate compliance).

I currently possess all required California commercial permits, licenses and registrations. I have also already successfully completed the Council EFP application process twice, worked with NMFS to complete all necessary requirements to be issued a federal EFP (commercial fishing vessel safety examination decal issued by the Coast Guard, federal observer program vessel safety inspection, federal protected species skipper workshop/training, pass OGC/OLE sanctions check), have carried a federal observer on my vessel on 182 fishing days, and completed and submitted in a timely fashion all required logbooks, landing receipts, and progress reports to CDFW, NMFS, and PFMC.

4. Train all persons operating under the permit.

I have trained at least 8 crew members to safely fish DSBG and NSBG on my vessel, as well as overseeing crew on vessels in other fisheries.

5. Coordinate field activities and communicate field findings with CDFW Marine Region.

N/A

6. Collect, analyze, and transmit data gathered under the EFP to CDFW marine region.

I have completed state and federal commercial fishing logbooks and landing receipts over the past 20 years of fishing experience, submitted them in a timely manner, assured accurate records, and facilitated necessary observer coverage to allow for observer data to be collected.

D. PERMIT APPLICATION TYPE

1. Select desired permit tier.

- Tier 1 (For purposes other than exploratory fishing)
- Tier 2 (For purposes other than exploratory fishing with assistance from CDFW)
- Tier 3 (For the purpose of exploratory fishing)
- Tier 4 (For the purpose of exploratory fishing with assistance from CDFW)

2.H as pre-application consultation with CDFW taken place with respect to this proposal? (Required for a Tier 2 EFP, Tier 4 EFP, or permit fee reduction option)

- Yes No

If yes, attach a copy of the pre-application consultation summary letter or provide the name and contact information of CDFW staff with whom the applicant consulted:

John Ugoretz (email omitted) EPM I – Pelagic Fisheries & Ecosystem Program

Liz Hellmers (email omitted) Senior ES (specialist)

E. PROJECT DESCRIPTION

Describe the proposal and any other relevant details, including:

1. A description of the experimental design and research plan, including specific procedures for data collection, storage, processing, and analysis; and a timeline for implementing the project, including, if applicable, when compensation fishing is expected to occur.

I will begin fishing as soon as the EFP has been issued to me if environmental conditions allow. Other specifics of gear configuration, data collection etc. are described in below questions and in figures attached to the end of this application.

2. A list of target species expected to be harvested as samples or for compensation under the EFP, including anticipated amounts (weight or number) and proposed use (e.g., bait, sell, personal use, or other (e.g., research or tag and release)). [Add rows to the table below as needed.](#)

Species Name	Weight or Number	Proposed Use
Swordfish	Up to 250	Sell
Pacific bluefin tuna	Up to 250	Sell
Opah	Up to 100	Sell
Common Thresher	Up to 25	Sell
Misc marketable HMS	Up to 250	Sell

3. A list of species expected to be taken incidental to fishing conducted under the EFP, including anticipated amounts (weight or number), proposed use (e.g., bait, sell, personal use, discard, or other (e.g., research or tag and release)), and a description of any measures that will be used to reduce incidental catch mortality. [Add rows to the table below as needed.](#)

Species Name	Weight or Number	Proposed Use
Bigeye thresher shark	Up to 25	Sell or live release
Blue shark	Up to 25	Live release

4. A description of the mechanisms that will be utilized to ensure that any proposed harvest limit for target and incidentally caught species are not exceeded and are accurately tracked or monitored (e.g., at sea fisheries observers, electronic monitoring, or other reporting method); and, if applicable, a description of the vessel's capacity to accommodate an onboard observer.

There are currently no quotas or harvest limits for the above stocks, except for Pacific bluefin tuna. My proposed EFP activity will not negatively affect any of these stocks, all of which are currently understood to be in healthy condition. Pacific bluefin tuna are managed under an annual quota tracked by CDFW, and I am aware that all bluefin tuna landings are required to be reported within 24 hours. I will complete daily logbooks of all fishing activity and am able to carry an observer when requested. My vessel has 6 bunks, two heads, and only one crew member is necessary to fish DSBG. This allows plenty of room for an observer. My vessel has met all Coast Guard and federal observer program safety requirements and is up to date in these verifications.

5. A description of any potential impacts on existing fisheries, habitats, or possible incidental interactions with threatened, endangered, or protected species (e.g., sea turtles, marine mammals, and birds) that could occur as a result of the project.

Impacts to existing fisheries are not anticipated. My gear is fished within a 5 nm mile radius, is actively tended, and there is minimal gear at the surface. Surface marker buoys will help other vessels avoid the gear and its configuration prevents the gear from fouling propellers or snagging on passing vessels. The US imports over 85% of its swordfish, so additional domestic catch would be beneficial for the markets and would not displace any currently authorized commercial fishing gear allowed for swordfish harvest.

To date I have had no interactions with any threatened, endangered or protected species using this gear. Incidental catch of non-target species has been minimal (a couple of blue sharks released alive in good condition). In thousands of sets conducted by all federal DSBG EFP fishing only a couple of interactions with elephant seals have occurred, all released alive with minimal injury. There was one surface interaction with a sea turtle (released alive with no injury) which resulted in NMFS requiring a modification to the surface configuration of the gear for all EFP holders.

6. The type and amount of gear to be used, including gear specifications and design, and, if applicable, a description of any measures and/or devices that will be used to reduce bycatch. If the project involves gear modifications or other gear innovations, the description must include the means by which CDFW staff can locate, retrieve, and inspect the proposed gear.

I intend to use DSBG (both SBG and LBG) and NSBG (both SBG and LBG) in the exact configuration approved by the PFMC and allowed by NMFS under the federal EFPs (Terms and Conditions for SBG [here](#) and LBG [here](#)).

Summary of Federal specifications for DSBG/NSBG configuration:

- 1) Daytime SBG and LBG will be fished between sunrise (local time) and sunset (local time). Night SBG and LBG will be fished between sunset (local time) and sunrise (local time). If both day and night buoy gear fishing occur during the same 24-hour day, gear will be retrieved at the end of fishing with one type and re-deployed at the beginning of the fishing period for the other.
- 2) No fish will be transferred to or from the vessel while at sea. Fish caught by other authorized gears on the same vessel/trip will be kept separate and distinct for reporting on landings receipts.
- 3) A maximum total of 10 pieces or sections combined of SBG and LBG per vessel deployed simultaneously per day (unless CDFW approves more pieces in the future).

- 4) A single piece of SBG will contain no more than a single weighted line with up to three hooks. A single section of LBG will contain no more than three hooks, up to a maximum of 30 hooks total. The gear will be soaked for no more than eight continuous hours each day. A full complement of ten pieces of DSBG (including all vertical lines whether SBG or LBG) will contain no more than 30 hooks. A combination of single pieces of SBG and linked sections of LBG will contain a maximum of 30 hooks.
- 5) For daytime fishing, all hooks will be deployed below the mixed layer (>90 m) with a maximum of 3 hooks to target swordfish and other marketable HMS at depths of 250 – 400 m (for SBG, one hook may be placed at greater than 90 m depth, and up to 2 hooks may be placed at depths of 250 – 400 m). Each set will use only 16/0 or 18/0 circle hooks with no more than 10 degree offset, using only squid or mackerel bait, or artificial baits.
- 6) The surface flotation system will consist of a minimum of three buoys. The surface buoy flotation and strike detection array will be a streamlined inline configuration, with no loops or hanging material, and no more than 6 feet between adjacent buoys, to reduce entanglement potential. The surface buoy flotation and strike detection array will consist of a >46 lb non-compressible hard ball, a minimum six pound inline-float, and a sub-surface inline-float, all connected in-line with a minimum of 3/8 inch diameter line, and no more than six feet between adjacent buoys. There will be no use of buoy tether attachments (e.g., non-streamlined gear with loops and dangling components).
- 7) Each piece of SBG will be equipped with a flag, radar reflector, and strobe. The buoys and flags will both be marked with the vessel's official number.
- 8) Each piece of SBG will use, at minimum, a single 3.6 kilogram lead weight that minimizes slack in the line and maintains the gear in a vertical orientation. Strike indicator floats will be used to detect 'hook-up' and allow for immediate gear servicing upon a 'strike.' A 'strike' occurs when a fish or other animal has taken the baited hook, and a 'hook-up' is when the fish or other animal is attached to the line via the hook. Line shooters will also be used when deploying LBG. Monofilament mainline size for LBG will be a maximum of 3.2 millimeters with 600-800 lb breaking strength.
- 9) For LBG, the "serviceable link" that connects the LBG sections will have a minimum of 50 foot drop length.
- 10) Each piece of gear will be deployed as quickly as practicable, and the fishing vessel will maintain a distance of no more than 3 nm from any piece of deployed gear.
- 11) The operator of the fishing vessel will actively tend all gear at all times and will maintain the gear within sight (<3 nm from any one piece of gear) of the fishing vessel. The total spatial distribution of all pieces of gear will not exceed a 5 nm footprint, with the closest piece of gear being no more than 3 nm from the vessel.

As listed in the above summarization, the current federal EFPs allow for 10 pieces of DSBG/NSBG to be fished at any one time. This year I will be applying to the PFMC for an EFP which would allow me to test fishing with a larger number of pieces (15-20). I request that should the PFMC approve this new EFP AND I have fished DSBG/NSBG in state waters successfully with no issues that CDFW consider allowing me to fish 15-20 pieces of gear in state waters as well. I am willing to take an observer on all such trips should CDFW require.

7. The location and timing of the project. The description must include trip specifications, such as fishing depth, anticipated number of trips, expected trip duration, and estimated number of hauls and average soak time (for fixed gear) or estimated number of tows/sets to be made per day, and estimated duration and speed per tow (for mobile gear). For project vessels listed in [Section F](#) of this document, the description must also identify any fishing activity that is expected to occur on the same trip as the project for purposes other than those provided by the EFP (e.g., fishing before and/or after the EFP activities).

All fishing activity within state waters would be in those areas listed above in B2 (Mugu canyon, Point Dume, Palos Verdes, Newport Beach to Dana Point, and around the Channel Islands - maps of general fishing locations provided at end of application). Fishing activity within state waters will generally be between 1-3nm offshore, except for at San Clemente Island, where there are deep canyons within 1 nm. All fishing off the northern Channel Islands will be outside of 1 nm. All fishing activity would be outside boundaries of existing marine protected areas. Daytime sets are fished between 300-1000 ft (usually on the deeper end) and will be in waters 1,200 ft or greater in depth, and nighttime sets are fished at 300 ft and will be in waters greater than 500 ft, in accordance with the federal EFP requirements.

I estimate 50-100 fishing days for DSBG and 70 fishing days for NSBG. Depending on fishing location and conditions, trips are rarely longer than 4-8 days. Soak times for each set are around 8 hours or less, with individual pieces of gear being retrieved when something is hooked. They are then usually redeployed, but more than 10 pieces of gear are never in the water at one time. All sets will be actively tended. Fishing with additional gears will likely be minimal and consist only of opportunistic harpoon or hook and line fishing.

Nighttime fishing with NSBG under my federal EFP has only caught Pacific bluefin tuna. I suspect this is because swordfish are shallower than 300 ft at night. I would like to request

CDFW consider allowing me to fish some exploratory NSBG sets shallower (150-200 ft) to see if this results in swordfish catch.

F. PROJECT VESSELS (IF APPLICABLE)

Provide vessel information. Using the table below, complete a separate entry for each project vessel to be authorized by the EFP. For any vessel that will be used in commercial fishing activity related to the permit, the commercial boat registration number issued pursuant to [FGC Section 7881](#) is required. For any vessel that will not be used in commercial fishing activity related to the permit, the commercial boat registration number issued pursuant to [FGC Section 7881](#) or a copy of the United States Coast Guard Certificate of Documentation is required. If there is no Certificate of Documentation for the vessel, a copy of the vessel’s state registration is required.

Vessel Name	Bear Flag II
Commercial Boat Registration Number	[boat registration number omitted]
Vessel Owner Number	[vessel owner number omitted]
Telephone Number	[telephone number omitted]
Vessel Operator Name	Nathan J Perez, Thomas H Carson

Vessel Name	Bear Flag III
Commercial Boat Registration Number	[boat registration number omitted]
Vessel Owner Number	[vessel owner number omitted]
Telephone Number	[telephone number omitted]
Vessel Operator Name	Nathan J Perez, Thomas H Carson

G. SIGNATURE



Signature of Applicant

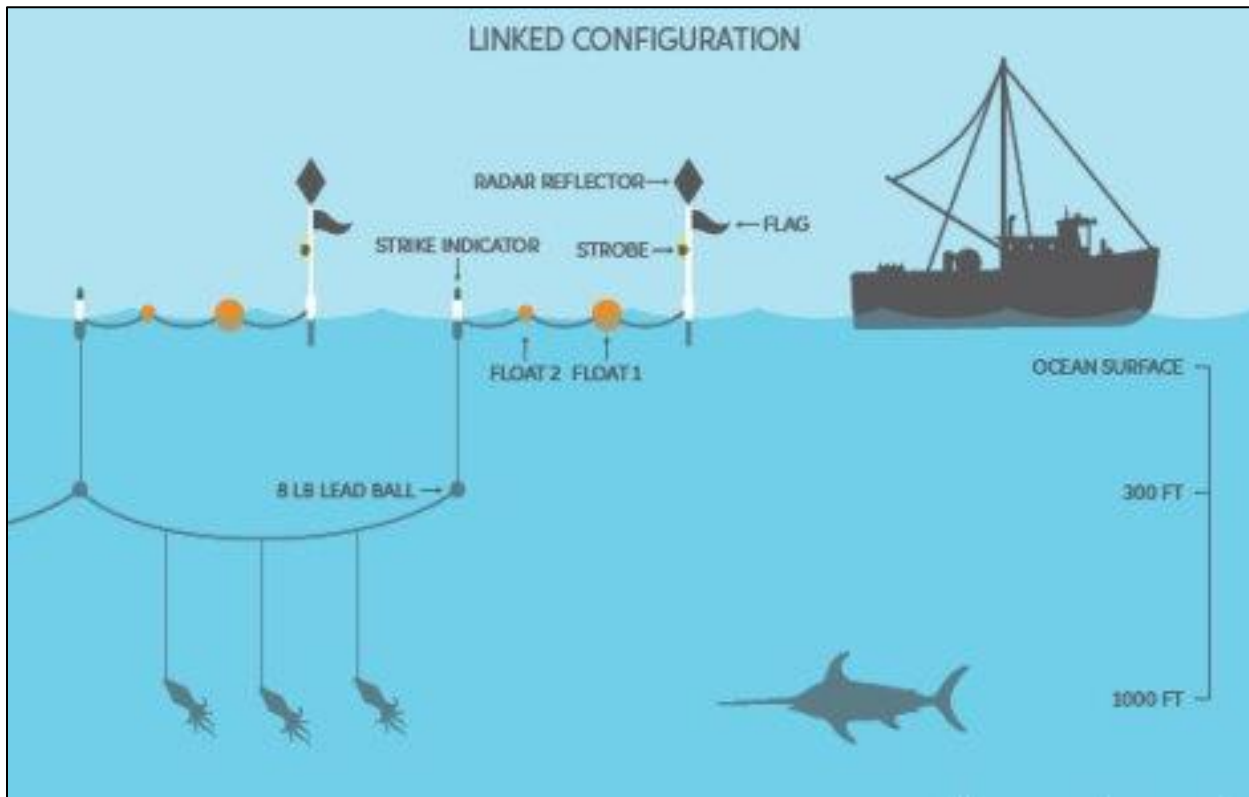
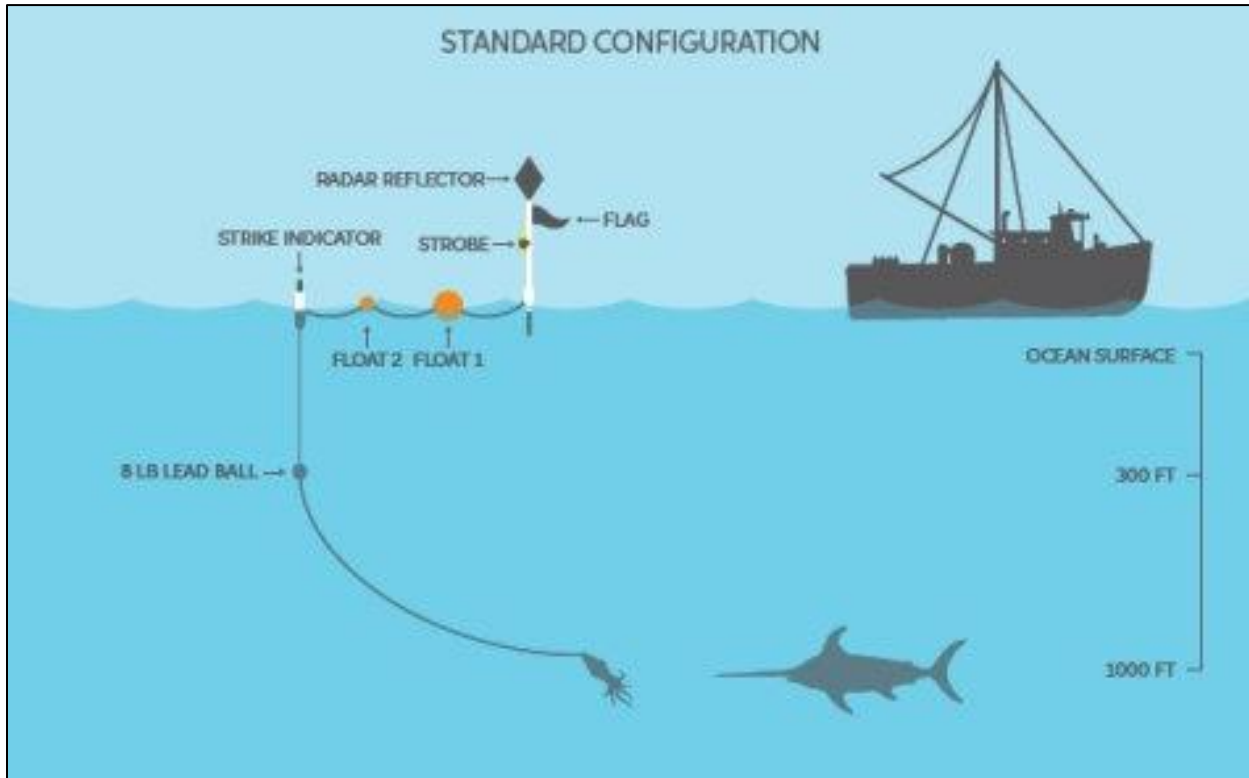
4-13-2022

Date

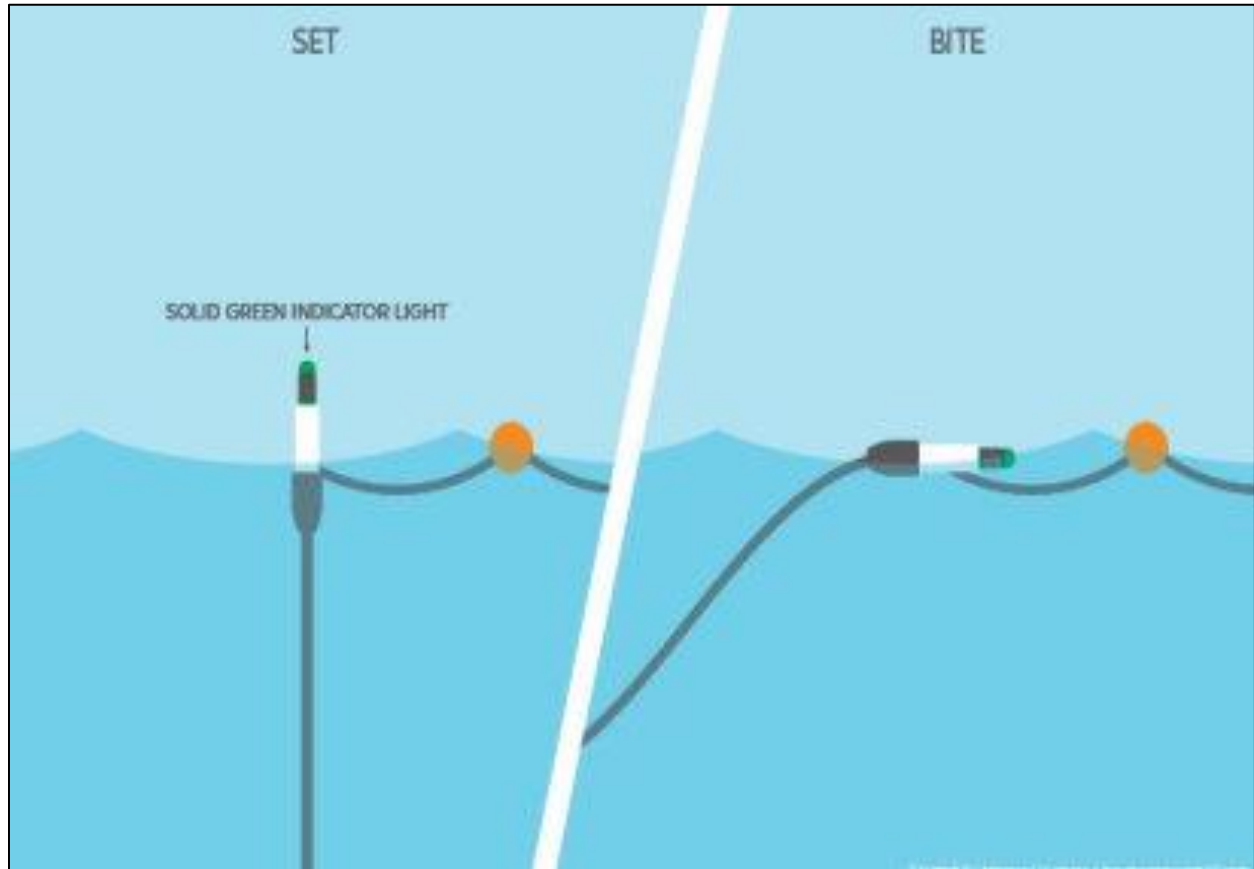
H. APPLICATION FEE PAYMENT

Please see [CDFW’s EFP Program page](#) for further information.

Deep-set buoy gear configurations:



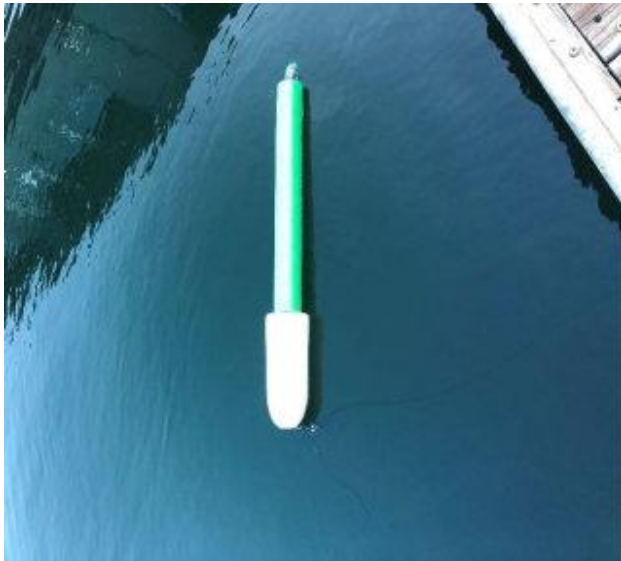
Night-set buoy gear configuration (*light color has been changed to blue on actual gear at request of Enforcement*):



Deployed:

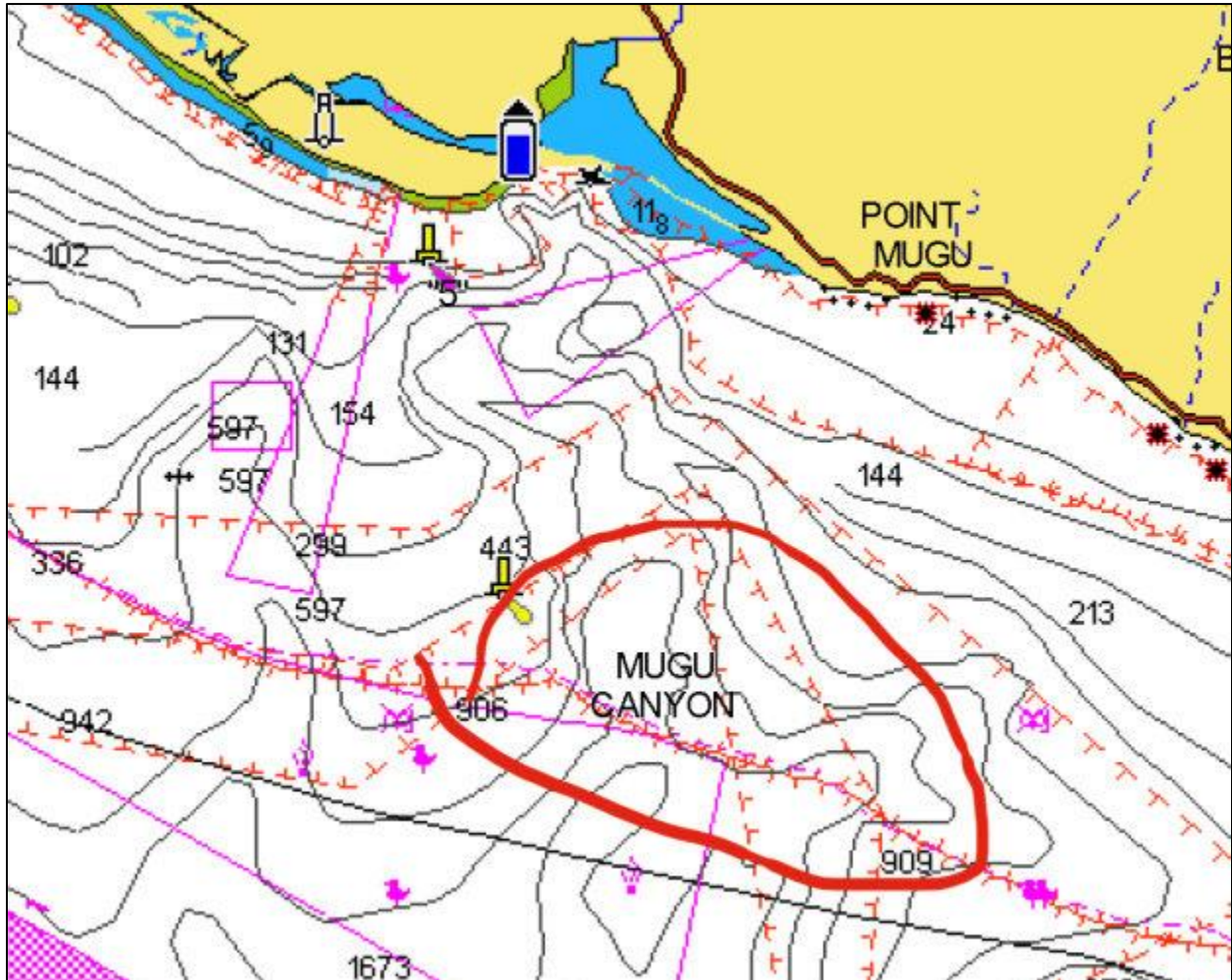


Strike Indicated:

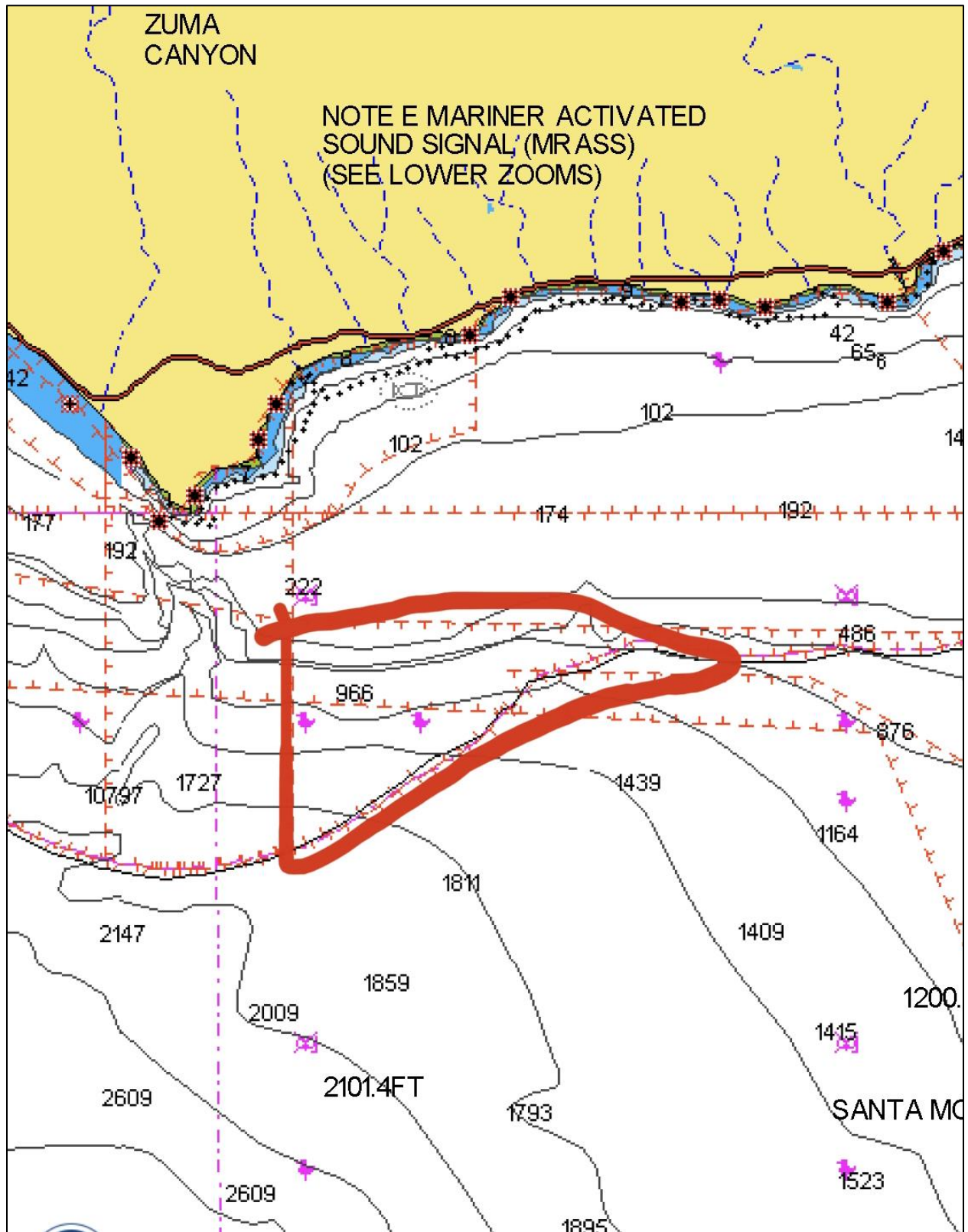


Areas within mainland state waters (maps are provided to give a general idea of fishing locations. No fishing will occur within any marine protected areas):

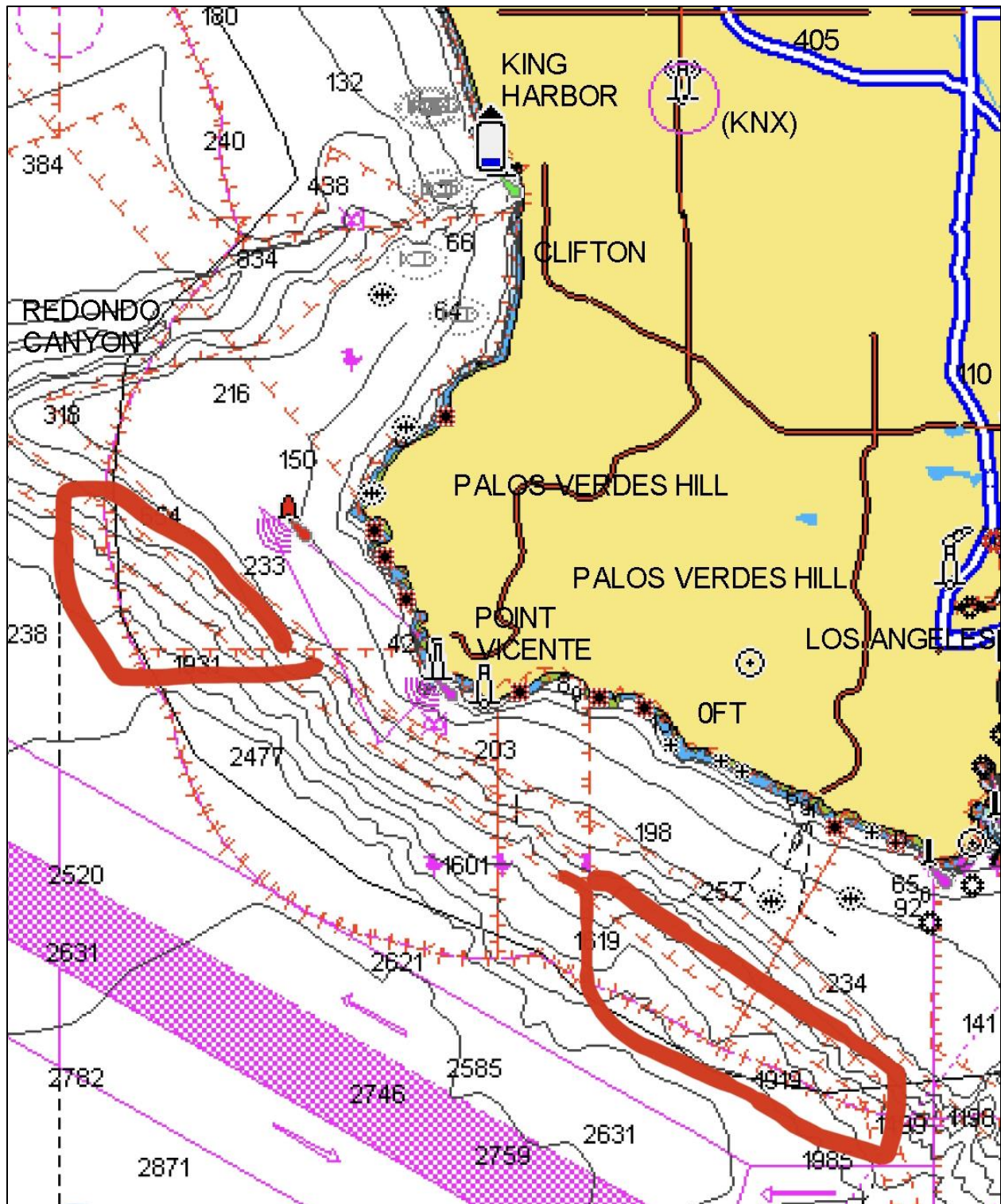
Mugu canyon



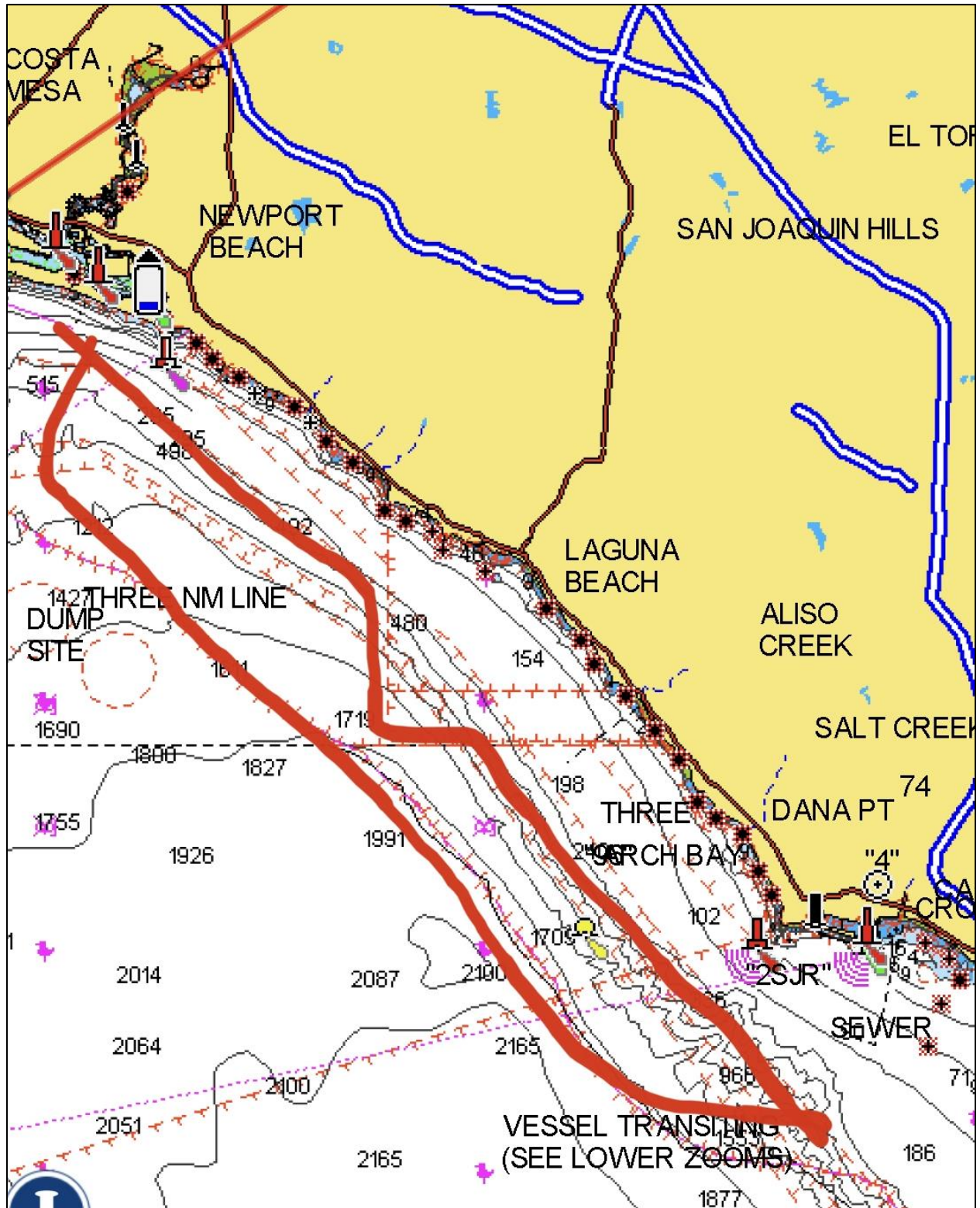
Point Dume



Palos Verdes



Newport to Dana Point



Memorandum

Date: June 28, 2022

To: Melissa Miller-Henson
Executive Director
California Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Transmittal of California Department of Fish and Wildlife Recommendation on Experimental Fishing Permit Application for Deep-Set and Night-Set Buoy Gear Fishing within California State Waters**

The California Department of Fish and Wildlife (Department) has concluded technical review of the above-mentioned Experimental Fishing Permit (EFP) application packet from Nathan J. Perez, pursuant to subsection 91(d)(2), Title 14, California Code of Regulations (CCR).

The applicant seeks a Tier 3 (exploratory fishing) EFP to test the commercial use of deep-set buoy gear (DSBG; both standard and linked) and night-set buoy gear (NSBG; both standard and linked) to target swordfish and other highly migratory species within state waters around the Channel Islands and in limited areas off the mainland. To date, DSBG and NSBG fishing trials have occurred only in federal waters (3-200 nautical miles) off California under the federal exempted fishing permit issued under the Magnuson-Stevens Act (50 CFR 600.745).

The Department recommends that the California Fish and Game Commission (Commission) approve the EFP application with special conditions. The standard terms and proposed special conditions (DFW 1103) are attached for the Commission's consideration. If approved, special conditions together with the standard terms will ensure the protection of marine resources, pursuant to Fish and Game Code Section 1022, and allow the Department to adequately enforce the EFP.

If you have any questions on this item, please contact Dr. Craig Shuman, Marine Regional Manager, at (916) 215-9694 or by email at R7RegionalMgr@wildlife.ca.gov.

Attachments

- Standard terms and proposed special conditions (DFW 1103)
- Public notice of Department recommendation
- EFP Application for Deep-Set and Night-Set Buoy Gear Fishing within California State Waters (confidential information omitted)
- CEQA Overview Memo and Draft Notice of Exemption

ec: Chad Dibble, Deputy Director
Wildlife and Fisheries Division

Melissa Miller-Henson, Executive Director
Fish and Game Commission
June 28, 2022
Page 2

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Law Enforcement Division

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Marine Region

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Marine Region

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Marine Region

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Marine Region



MARINE FISHERIES: EXPERIMENTAL FISHING PERMIT TERMS AND CONDITIONS

Experimental Fishing Permit No.

Revision Date:

MARINE FISHERIES: EXPERIMENTAL FISHING PERMIT TERMS AND CONDITIONS

Pursuant to California Fish and Game Code (FGC) Section 1022 and Section 91, Title 14, California Code of Regulations (CCR), the Experimental Fishing Permit (EFP) holder is authorized to conduct experimental fishing activities according to the requirements of the EFP approved by the Fish and Game Commission (Commission) and issued by the California Department of Fish and Wildlife (Department).

EFP Holder/Entity Administrator Name: Nathan J. Perez

EFP Holder/Entity Administrator Address: [address omitted]

Authorized Agent Name: Thomas H. Carson

Authorized Agent Address: [address omitted]

Vessel Name and ID #: Bear Flag II [vessel ID omitted]

Description of authorized activity: Commercial use of deep-set buoy gear (both standard and linked) and night-set buoy gear (both standard and linked) to target swordfish and other highly migratory species within state waters around the Channel Islands and in limited areas off the mainland.

STANDARD TERMS

These standard terms shall apply to all persons or vessels conducting activities under the EFP.

1. The permit shall be operated only on the vessels named on this form, if applicable. Either the EFP holder or the authorized agent must be aboard the vessel when activities are being conducted under this permit, and both are responsible and accountable for meeting the requirements and limits of this permit.
2. Pursuant to FGC Section 7857(d), the EFP holder or authorized agent shall have a valid copy of the Department issued EFP attached to a signed copy of this form in possession when activities are being conducted under this permit.
3. All persons conducting activities under an EFP must comply with all appropriate state and federal fishing laws and regulations, including but not limited to those relating to protected species, minimum size limits, and seasons or areas closed to fishing that are not otherwise exempted by the permit (see special conditions).



MARINE FISHERIES: EXPERIMENTAL FISHING PERMIT TERMS AND CONDITIONS

- 4. The EFP holder and authorized agent shall cooperate with the Department by allowing personnel designated by the Department to board the fishing vessel on any fishing trip (if applicable) or enter a place of business operated by the EFP holder or authorized agent under this permit, to retrieve, observe, or inspect any logbook, records, data, equipment, procedures, or catch throughout the duration of the permit.
- 5. The EFP holder or authorized agent shall provide Department staff with a 24-hour notice prior to every fishing trip. The contact information for Department staff will be provided for this purpose at the time of permit issuance.

SPECIAL CONDITIONS

As set forth in subsection 91(i), Title 14, CCR, special conditions may be placed on this permit for research purposes and the conservation and management of marine resources and the environment (see following page).

As set forth in subsection 91(k), Title 14, CCR, special conditions may be amended or repealed as necessary for research purposes and the conservation and management of marine resources and the environment.

RECEIPT AND ACKNOWLEDGEMENT

The permit is not valid until the EFP holder has certified by their signature below that they have: 1) read and understand the standard terms and special conditions of the permit; 2) unless otherwise specified in special conditions, paid the appropriate fees specified in Section 704, Title 14, CCR; and 3) returned a signed copy of this form to the Department.

I have read, understand and agree to abide by all standard terms and special conditions of this permit.

EFP Holder Signature

Date

Received by License and Revenue Branch (LRB)

Fee \$ _____

Experimental Fishing Permit No. _____

Revision Date _____

By: LRB

Date



Experimental Fishing Permit No.

Revision Date:

Authorization and Special Conditions

List of approved special conditions, names and addresses of any additional authorized agents, and/or names and identification number of any additional authorized vessels.

Additional Vessel: Bear Flag III [vessel ID omitted]

Conditions for both Daytime Deep-Set Buoy Gear (DSBG) and Night-Set Buoy Gear (NSBG):

1. Only one vessel/operator shall fish under this EFP at any time.
2. All individuals fishing under a state EFP must possess all required state and federal permits.
3. All fishing activity permitted under this EFP will be fished within the terms and conditions consistent with federal DSBG EFPs, and as outlined below. If a set extends outside of state waters, or if fishing occurs in both state and federal waters on the same trip, all fishing of that set or trip must be conducted under the more restrictive terms and conditions (whether federal or state).
4. 24 hours prior to commencing a fishing trip during which EFP activity is expected to be conducted, notice of vessel name, anticipated fishing dates, port of departure, and expected landing port must be made via email to the Department (LEDMarineNotifications@wildlife.ca.gov) and to the National Marine Fisheries Service (NMFS) West Coast Region (WCR) primary contact as directed under NMFS EFPs.
5. Within 24 hours of port landing and cessation of any EFP fishing trips, notice of vessel name and EFP fishing dates must be made via email to the Department (LEDMarineNotifications@wildlife.ca.gov) and to the NMFS WCR primary contact as directed under NMFS EFPs.
6. Fishing is permitted in state waters outside the boundaries of any marine protected area and deeper than 1,200 ft for DSBG or 500 ft for NSBG as follows:
 - a. **Channel Islands** – 1-3 nautical miles (nm) offshore of the Channel Islands except for around San Clemente Island, where fishing may occur between the shoreline and 3 nm as long as depths are greater than 1,200 ft for DSBG and 500 ft for NSBG;
 - b. **Mugu Canyon** –east of 119° 09' W. longitude and west of 119° 02' W. longitude
 - c. **Point Dume** –east of 118° 47.260' W. longitude and west of 118° 42' W. longitude
 - d. **Palos Verdes** –north of 33° 44.800' N. latitude and south of 33° 48' N. latitude **or** east of 118° 22.500' W. longitude and west of 118° 18' W. longitude
 - e. **Newport to Dana Point** –south of 33° 35.372' N. latitude and north of 33° 27.300' N. latitude
7. This EFP shall be used to fish a maximum total of 10 pieces or sections combined of standard buoy gear (SBG) and linked buoy gear (LBG) deployed simultaneously per fishing period (a day or a night), unless otherwise approved by the Department, as specified in 8, below.



8. If the Department deems the permitted activity to have minimal negative impacts and confirms lack of unacceptable bycatch, gear conflicts, or other concerns through observer records, the Department may grant the permit holder permission to fish more than 10 pieces of gear as specified by the Department and in specified state waters.
9. A single piece of SBG shall contain no more than a single weighted line with up to three hooks. A single section of LBG shall contain no more than three hooks, up to a maximum of 30 hooks total for all gear set. The gear shall be soaked for no more than eight continuous hours each day. A full complement of ten pieces of DSBG (including all vertical lines, whether SBG, LBG, or a combination of the two) shall contain a maximum of 30 hooks total.
10. All hooks must be deployed below the mixed layer (>295 ft; 90 m) to target swordfish and other marketable HMS during both day and night fishing; for SBG, only one hook may be placed shallower than 820 ft, and up to 2 additional hooks may be placed at depths of 820-1,312 ft.
11. If the Department deems the permitted activity to have minimal negative impacts and confirms lack of unacceptable bycatch, gear conflicts, or other concerns through observer records, the Department may grant the permit holder permission to fish NSBG shallower than 295 ft as specified by the Department and in specified state waters.
12. Each set will use only 16/0 or 18/0 circle hooks with no more than 10-degree offset, using only squid or mackerel bait, or artificial baits.
13. The surface flotation system will consist of a minimum of three buoys. The surface buoy flotation and strike detection array must be a streamlined inline configuration, with no loops or hanging material, and no more than 6 feet between adjacent buoys, to reduce entanglement potential. The surface buoy flotation and strike detection array will consist of a >40-pound flotation non-compressible hard ball, a minimum six-pound flotation inline-float, and a sub-surface inline-float, all connected in-line with a minimum of 3/8 inch diameter line, and no more than six feet between adjacent buoys. Use of buoy tether attachments (e.g., non-streamlined gear with loops, nooks, and dangling components) will be prohibited.
14. For LBG, the “serviceable link” that connects the linked buoy gear sections is required to have a minimum of 50-foot drop length.
15. Each vertical line must use a minimum of an 8-pound (3.6 kg) lead weights to minimize slack in the line and maintain the gear in a vertical orientation. Strike indicator floats will be used to detect ‘hook-up’ and allow for the immediate gear servicing upon a ‘strike.’ A ‘strike’ is when a fish or other animal has taken the baited hook, and a ‘hook-up’ is when the fish or animal is attached to the line via the hook. Line shooters must also be used when deploying LBG. Monofilament mainline size for LBG shall be limited to a maximum of 3.2 millimeters with 600-800 pounds breaking strength.
16. Each piece of DSBG or NSBG must be equipped with a flag, radar reflector, a strobe and a trailing buoy marked with “CDFW EFP”. Both the flags and buoys must be marked with the vessel’s official number.
17. All gear must be deployed as quickly as practicable and the vessel must be proximal to the



gear at all times (<2 nm) to meet “active tending” requirements (as set forth in condition 18 below) for the purpose of minimizing impacts to any non-target species.

18. The operator of the fishing vessel must actively tend all gear at all times and must maintain the gear within sight (<2 nm from any one piece of gear) of the EFP participant’s fishing vessel. Due to the proximity to shore, the total spatial distribution of all pieces of gear is not to exceed a 3 nm diameter footprint, with the farthest piece of gear being no more than 2 nm from the vessel, which is more restrictive than the federal requirement of 3 nm from any one piece of gear and a 5 nm footprint.
19. Any vessel fishing under this EFP is required to carry a qualified fisheries observer, at the discretion of the Department, as well as a federal observer, at the discretion of the NMFS WCR Observer Program contact. 48 hours advanced notice of departure must be made to the observer provider in accordance with guidelines provided by the NMFS WCR Observer Program contact.
20. No fish shall be transferred to or from the vessel operating under this permit. Fish caught outside of state waters or by other authorized HMS gears (e.g., harpoon, drift gillnet) on the same vessel must be distinctly marked for reporting on landing receipts and logbooks. Each vessel shall only retain fish caught on gear it has deployed, tended, and retrieved.
21. No groundfish shall be taken or possessed onboard when DSBG or NSBG is used or on board the vessel.
22. For all trips, whether or not an observer is on board, federal DSBG log sheets must be filled out within or during the current calendar day for all fishing days, and copies of all log sheets must be submitted to the specified Department and NMFS WCR Observer Program contacts within 24 hours of landing. Logbooks must indicate which sets occurred in state waters (partially or completely), which fish (number or pounds) were caught in state waters and must match corresponding landing receipts.
23. All landing receipts must have the state EFP permit number recorded in the “State Permit #” field, “DSBG EFP” or “NSBG EFP” written in the notepad area of the landing receipt, and indicate if fishing occurred in state waters. The correct gear codes (e.g., CDFW code 83 for SBG, 84 for LBG, 99 for all NSBG) must be used on the landing receipt. Fish caught in state waters must be reported separately on landing receipts (separate row) than fish caught in federal waters. All fish caught by other authorized HMS gears must be kept separate in the vessel hold, marked to identify gear type, and reported separately on landing receipts using the correct gear codes (e.g., CDFW code 1 for hand-held hook and line, 12 for harpoon, 63 for large-mesh drift gillnet).



Additional Conditions for DSBG (both SBG and LBG):

24. Fishing permitted under this EFP is limited to state waters (as specified in 6, above) during the day between sunrise¹ (local time) and sunset (local time). All vessels shall not set gear prior to sunrise and must initiate haul-back procedures by sunset. All DSBG (SBG and LBG) must be removed from the water no later than three hours after sunset local time. All DSBG (SBG and LBG) shall not be modified in any way to fish shallow (hooks at less than 90 m deep) and shall not be fished at night.

Additional Conditions for NSBG (both SBG and LBG):

25. Fishing permitted under this EFP is limited to state waters (as specified in 6, above) during the night between sunset² (local time) and sunrise (local time). All vessels shall not set gear prior to sunset and must initiate haul-back procedures by sunrise. All NSBG (SBG and LBG) must be removed from the water no later than three hours after sunrise local time. All NSBG (SBG and LBG) shall not be modified in any way to fish shallow (hooks at less than 90 m deep).

26. The strike detection buoy will have an extender at least 2 feet above the water with a light on top to aid in active tending of the gear. Also attached to the main floatation buoy is a flag and light or radar reflector.

¹ For the purpose of this section, sunset is defined as the time at which the upper edge of the sun disappears below the horizon or, if the view of the sun is obscured, the local time of sunset calculated from tables developed by the U.S. Naval Observatory or other authoritative source approved by the Regional Administrator, West Coast Region.

² For the purpose of this section, sunset is defined as the time at which the upper edge of the sun disappears below the horizon or, if the view of the sun is obscured, the local time of sunset calculated from tables developed by the U.S. Naval Observatory or other authoritative source approved by the Regional Administrator, West Coast Region.



Experimental Fishing Permit (EFP) Application

17 August 2022

Presented to:

California Fish and Game Commission

Presented by:

Marina Som, Acting EFP Coordinator

Elizabeth Hellmers, Sr. Environmental Scientist

Marine Region



EFP Program Overview

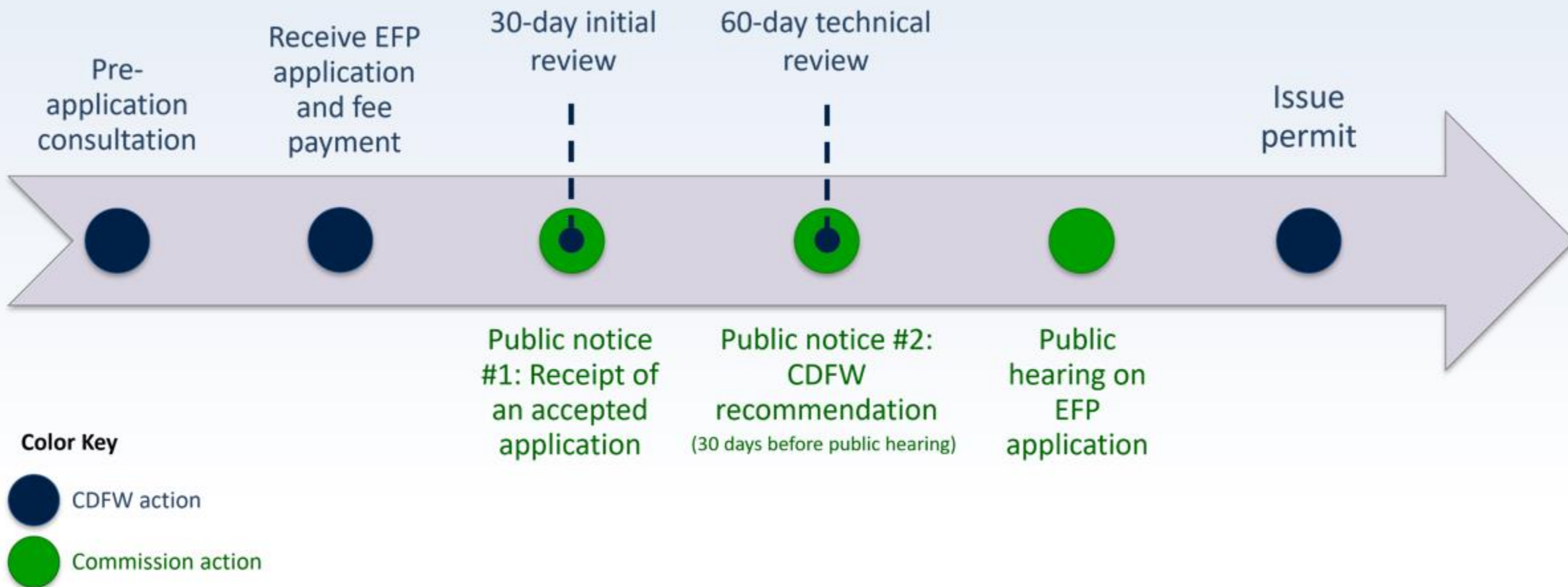


EFP Law and Regulations

- AB 1573 (California Fisheries Innovation Act of 2018)
 - Repealed FGC Section 8606 (experimental gear permit)
 - Added FGC Section 1022 (experimental fishing permit)
- Section 91, Title 14, CCR
 - EFP regulations for all marine fisheries
- Section 704, Title 14, CCR
 - EFP fee schedule and form



EFP Review and Approval Process

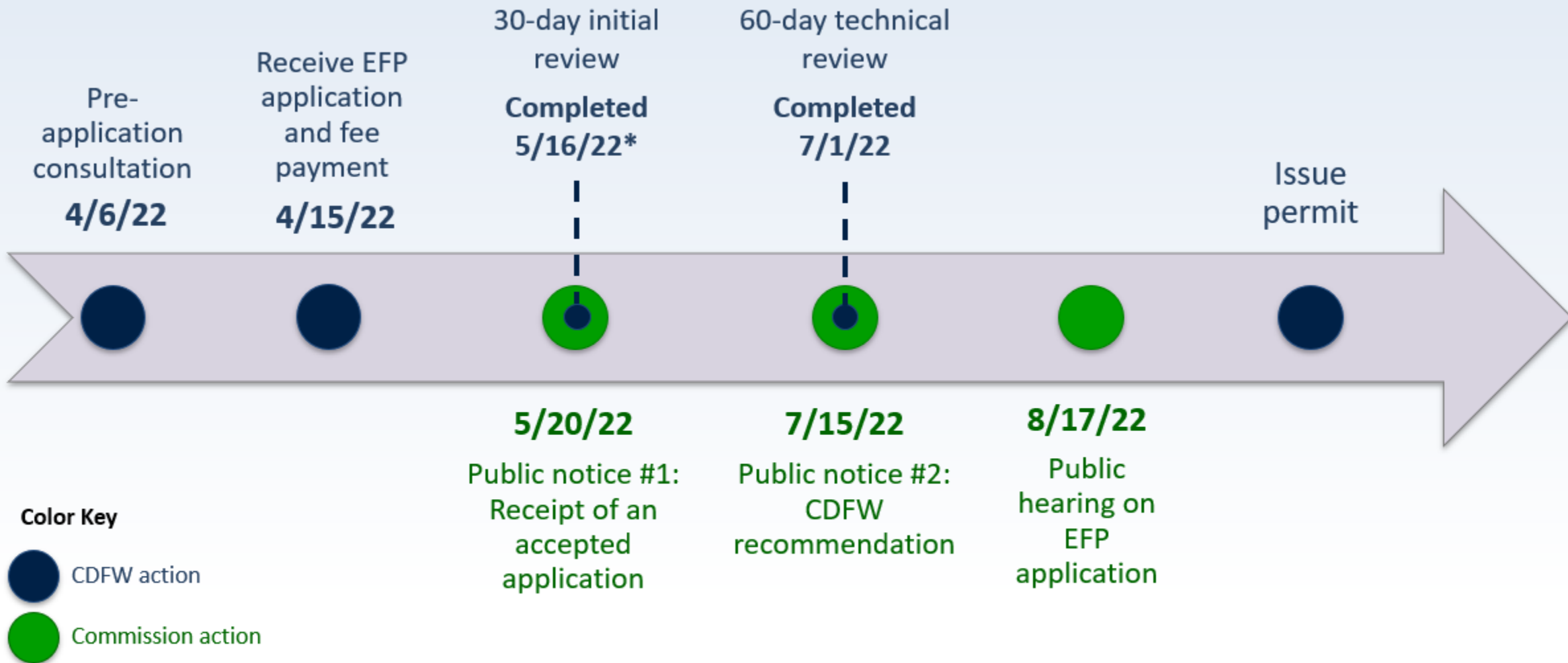




Deep-Set and Night-Set Buoy Gear EFP Application



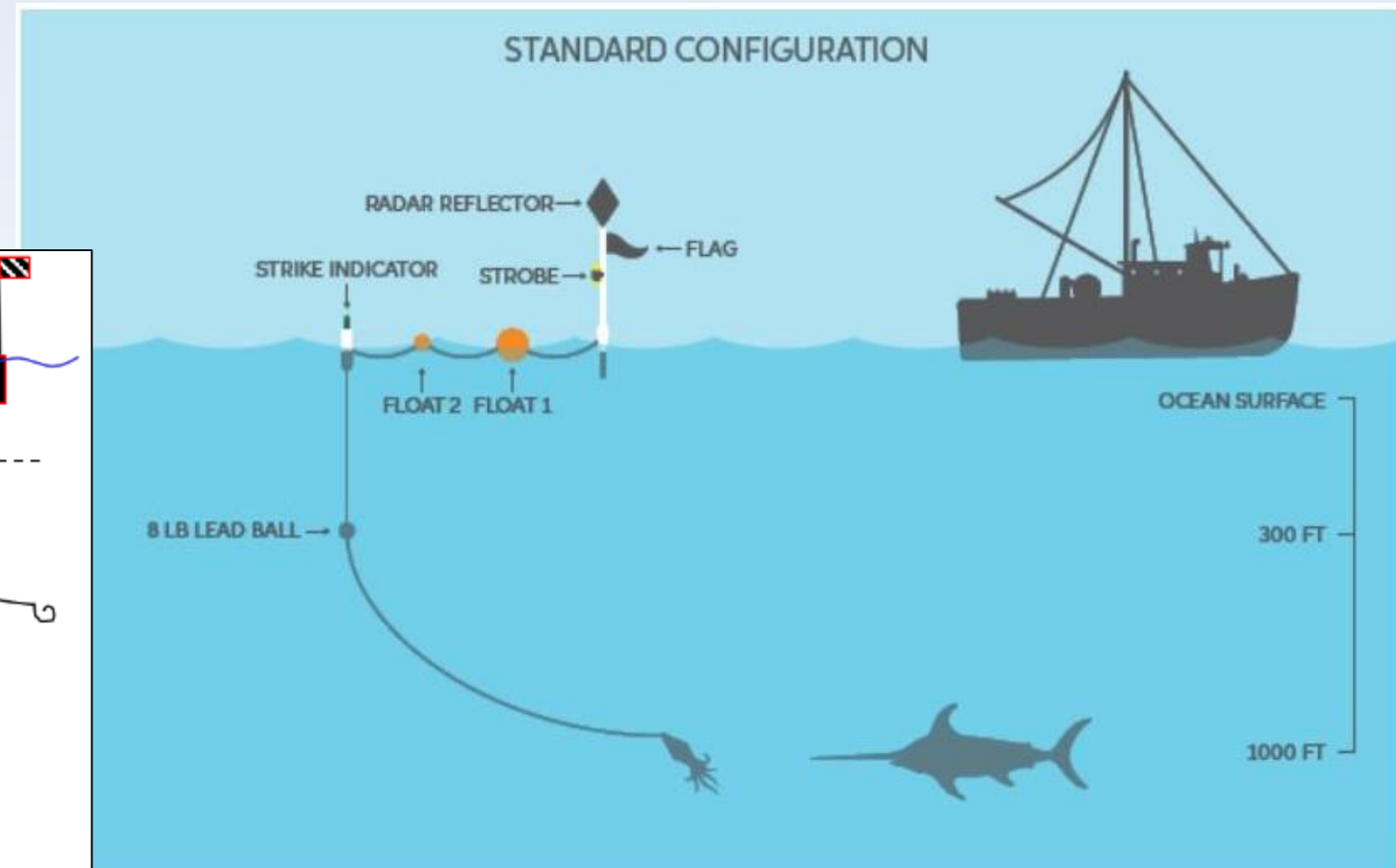
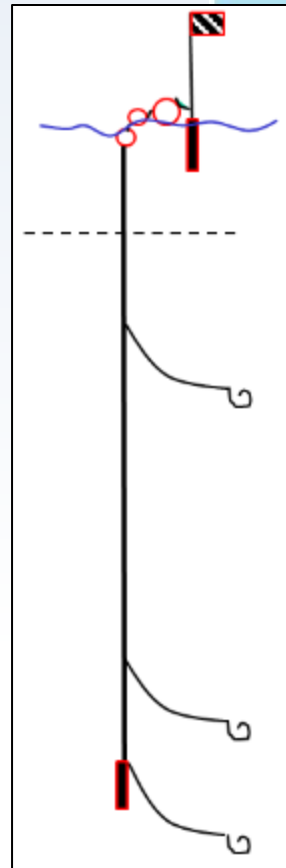
EFP Application Review Timeline



*End of 30-day initial review period fell on a Sunday, date completed reflects the next business day

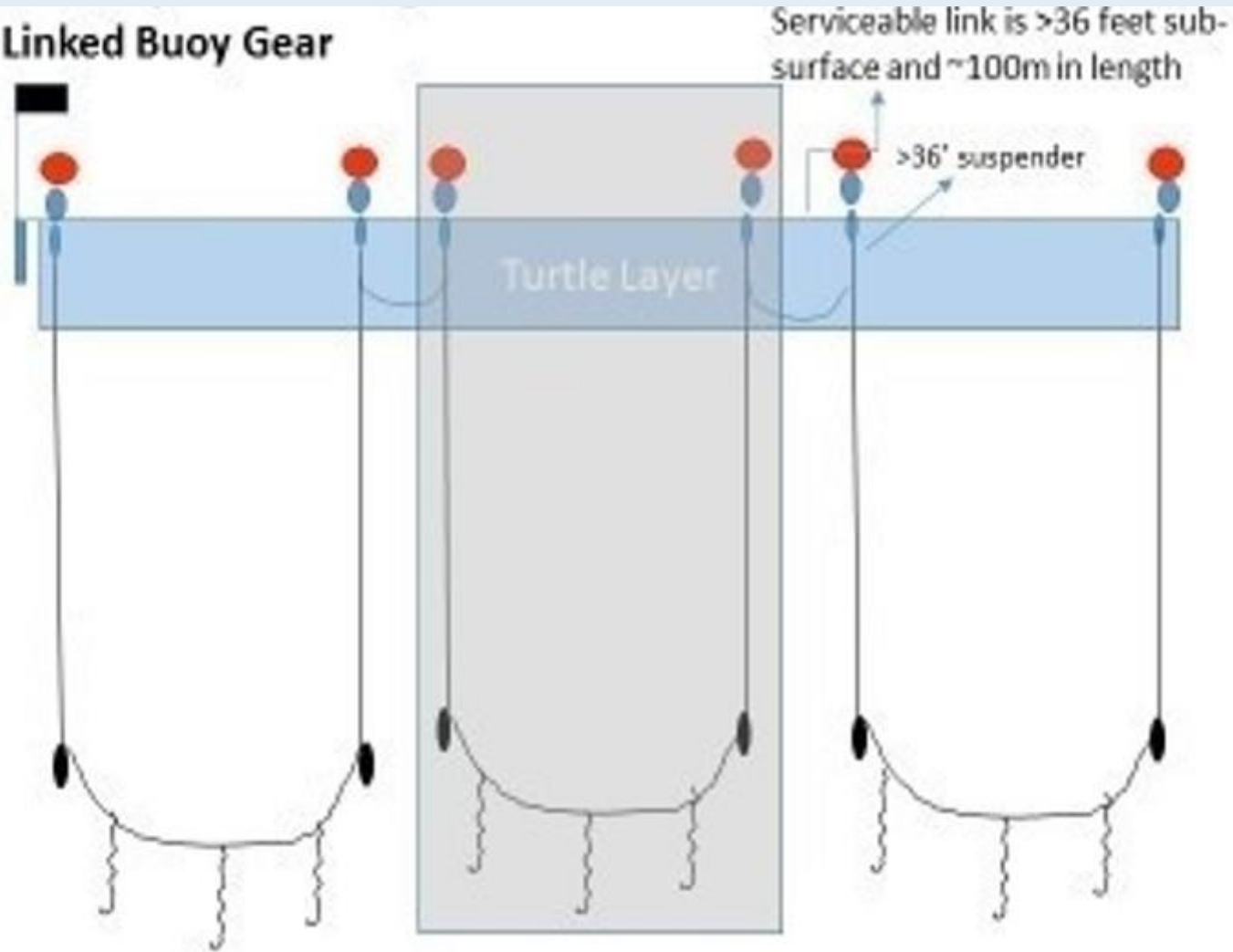
Deep Set Buoy Gear (DSBG)

- Two configurations
 - standard (SBG)
 - linked (LBG)
- Primarily targets swordfish
- Fishes below the thermocline
- Each piece of gear has 1 to 3 hooks



Deep Set Buoy Gear (DSBG), cont.

a. Linked Buoy Gear



- 3 hooks fished on horizontal mainline
- Pieces can be disconnected so that catch on one section of gear can be attended to
- No more than 10 pieces can be fished at one time



Federal DSBG EFPs

- DSBG Development and Testing
 - Research fishing 2011-2014
 - EFP approval began under PFMC in 2015
 - Of 64 authorized vessels, 37 have fished ~925 trips since 2016
 - 17 NSBG sets
 - Limited bycatch to date
 - 3 elephant seals released alive/unharmed
 - 1 loggerhead sea turtle released alive/unharmed



State DSBG EFP Application

- Applicant:
 - Trained on original PIER EFP vessel
 - Experience with SBG, LBG, NSBG as crew and captain
 - Only individual issued federal NSBG EFP
- Application requests:
 - Fish DSBG and NSBG in state waters in 5 specific areas
 - Fish more than 10 pieces of gear in state waters
 - Fish NSBG shallower than 295 ft
 - Use of two vessels



Proposed Terms & Conditions

- Same T&C as federal EFPs with additional restrictions:
 - Fishing allowed in state waters in specific areas
 - Smaller footprint (3nm, 2nm from any one piece of gear)
 - Federal and/or state observer coverage
 - No groundfish taken or possessed
 - Logs must be submitted within 24 hours of landing
 - Dept. may allow testing more pieces of gear or shallower night fishing
 - Only one vessel may fish at a time



Recommendation

Approval of EFP under specified Terms & Conditions

Allow Dept. to determine if appropriate to permit more pieces of gear and/or shallower NSBG fishing in state waters.

Thank You

Marina Som, Acting EFP Coordinator
Experimental Fishing Permit Program

Email: EFP@wildlife.ca.gov

Elizabeth Hellmers, Sr. Environmental Scientist (Specialist)
Pelagic Fisheries and Ecosystem Program

Email: AskMarine@wildlife.ca.gov