

EXEMPTED FISHING PERMIT (EFP) APPLICATIONS FOR HIGHLY MIGRATORY SPECIES

At their November meeting the Council adopted an interim protocol for reviewing EFP applications for the 2006 fishing year (April 1, 2006–March 31, 2007). (A permanent protocol applies to EFPs in years thereafter.) The Council received two EFP applications for consideration under the interim protocol, which stipulates a preliminary review at the November 2005 meeting and final action at the March 2006 meeting. The Council approved both applications for public review. At this meeting the Council is scheduled to finalize their recommendations on these two applications. The Council recommendations are forwarded to the National Marine Fisheries Service (NMFS), which has the permitting authority.

The first EFP application is linked to the drift gillnet (DGN) fishery action the Council takes up under Agenda Item J.3. Under that agenda item, the Council identifies a preferred alternative for management changes to the DGN fishery, based on an environmental assessment (EA) (Agenda Item J.3.a, Attachment 1). Five of the alternatives evaluated in the EA include an EFP fishery as a means to allow testing, under controlled conditions, of a DGN fishery in a time/area closure implemented to protect endangered leatherback sea turtles. The EFP proposal that is the basis for a permit under those alternatives is provided as Attachment 1. Obviously, the choice of a preferred alternative under Agenda Item J.3 represents a decision in principal about the Council recommendation on this EFP application. However, if the DGN EA preferred alternative includes an EFP fishery, under the current agenda item the Council can provide additional, specific recommendations on the terms under which this EFP would be granted. By the same token, if the Council does not choose a preferred alternative that includes an EFP fishery then it would not be appropriate to recommend approval of the EFP under this agenda item.

The second EFP application is for a related purpose, to conduct a small-scale pelagic longline fishery (involving one vessel) within the West Coast Exclusive Economic Zone (EEZ) to determine if longline gear is an economically viable highly migratory species (HMS) harvest substitute for DGN gear. Use of pelagic (floating) longline gear within the West Coast EEZ is currently prohibited under the Council's HMS Fishery Management Plan. The proposal notes that in the North Atlantic side-by-side testing of DGN and longline gear in the swordfish fishery demonstrated that longline gear is more selective, environmentally safe, and cost effective. This led to the eventual prohibition of DGN gear on the East Coast and the conversion of DGN permits to pelagic longline permits.

Taken together, these two EFP applications offer the Council the opportunity to gather information to support an eventual policy decision about long-term management of the DGN fishery. One approach evaluates the viability of continued prosecution of the DGN fishery with management measures to limit adverse environmental impacts. The second approach evaluates the feasibility of transitioning the fishery to a different gear type.

Council Action:

Consider EFP applications, make recommendations on approval with any specific terms for conditioning approval.

Reference Materials:

1. Agenda Item J.4, Attachment 1: Federation of Independent Seafood Harvesters Exempted Fishing Permit Application.
2. Agenda Item J.4, Attachment 2: Pete Dupuy Exempted Fishing Permit Application.

Agenda Order:

- a. Agenda Item Overview Kit Dahl
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. **Council Action:** Final Recommendations for Approving EFP Applications

PFMC
02/15/06

Federation of Independent Seafood Harvesters

PO Box 352
Bridgewater Corners, VT 05035



EXEMPTED FISHING PERMIT (EFP) APPLICATION

1. *Date of application:*

February 13, 2006

2. *Applicant's name, address, and telephone numbers:*

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3. *Statement of the purpose and goals of the exempted fishing for which an EFP is needed, including a general description of the arrangements for the disposition of all species harvested under the EFP:*

Highly Migratory Species (HMS), which includes swordfish, is managed by the Pacific Fishery Management Council (Council) under a federal fishery management plan (FMP). In part, the management goals of the HMS FMP are to:

- A. (2.) Provide a long-term, stable supply of high-quality, locally caught fish to the public.
- B. (3.) Minimize economic waste and adverse impacts on fishing communities to the extent practicable when adopting conservation and management measures.
- C. (4.) Provide viable and diverse commercial fisheries and recreational fishing opportunity for highly migratory species based in ports in the area of the Pacific Council's jurisdiction, and give due consideration for traditional participants in the fisheries.

- D. (17.) Manage the fisheries to prevent adverse impacts on any protected species covered by the Marine Mammal Protection Act (MMPA), and the Migratory Bird Treaty Act (MBTA), and promote the recovery of any species listed under the Endangered Species Act (ESA) to the extent practicable.

The purpose of the EFP is to assist the Council in achieving the above referenced goals of the FMP for the swordfish drift gillnet (DGN) fishery by collecting data on the incidental take of ESA protected leatherback sea turtles to allow for informed management decisions in determining appropriate protective measures thereby balancing the HMS FMP's management goals of providing a long-term, stable supply of high-quality, locally caught fish to the public, minimizing economic waste and adverse impacts on fishing communities, and providing viable and diverse commercial fishing opportunity for highly migratory species, while also managing the DGN fishery to prevent adverse impacts, and promote the recovery, of protected species.

Specifically the goals of the EFP are to:

1. Test the economic feasibility of the drift gillnet fishery operating within the current closed area under turtle take/mortality limits and 100% observer coverage
2. Collect biological and oceanographic information on bycatch and sea turtle interactions

Disposition of the species harvested under the EFP will be as follows:

- All marketable finfish species caught during the EFP may be retained and sold as prescribed through current regulations for DGN gear.
- Prohibited species may not be retained or sold.

4. *Justification explaining why issuance of an EFP is warranted:*

Although managed since 1982 under California statutory provisions, DGN fishery management issues since 1996 have been driven by MMPA requirements to protect marine mammals and ESA listed species. When the HMS FMP incorporated the DGN fishery, it adopted existing federal DGN regulations for gear configuration and marine mammal deterrent requirements recommended by the Pacific Offshore Cetacean Take Reduction Team in 1996 and implemented through a Take Reduction Plan (TRP) ¹ in 1997 to reduce the number of incidentally caught marine mammals. These regulations require DGN fishermen to deploy electronic warning devices called "pingers" attached to the net in a prescribed manner, and to use net buoy extenders with a minimum length of 36 feet to maintain the top of the net at that distance below the surface when the

¹ TRP regulations can be found at 50 CFR §229.

gear is set. The HMS FMP also adopted the DGN closure implemented in 2001;² to protect ESA listed leatherback sea turtles.

Due to the implementation of the TRP in 1997, an ESA required Section 7 Consultation was initiated in which the Biological Opinion determined that between 1991 and 1995, the leatherback take rate for nets with extenders less than 36' in length was .005 per set as opposed to a take rate of .004 per set for nets with extenders equal to or greater than 36', and used the latter rate for estimating leatherback takes. This resulted in an estimated level of leatherback entanglement and mortality in the DGN fishery that NMFS determined would not jeopardize their continued existence.

In 2000, due to the issuance of an MMPA permit authorizing the incidental take of ESA listed marine mammals in the DGN fishery, another ESA required Section 7 Consultation was initiated in which the Biological Opinion did not use the .004 take rate, established in 1997 for estimating future leatherback takes. Although the DGN fishery had been operating under TRP regulations requiring a minimum net depth of 36', a worst-case scenario leatherback entanglement rate of .009 per set, observed in 1995, was used to estimate leatherback takes. This resulted in an estimated level of leatherback entanglement and mortality in the DGN fishery that NMFS determined would jeopardize their continued existence. As a reasonable and prudent alternative to mitigate this jeopardy, the current time/area closure was proposed and implemented.

In an independent scientific review of the 2000 Biological Opinion commissioned by the California Seafood Council, Dr. Benjamin Gallaway identified four questionable areas in the Biological Opinion's analysis:

1. The population status of leatherbacks in the Western Pacific is substantially underestimated.
2. The temporal/spatial risk of leatherback interaction with the DGN fishery does not correspond with the overboard time/area restriction that was imposed. (Dr. Gallaway's assertion on this point has since been demonstrated: The 2000 Biological Opinion's estimate of leatherback incidental take and mortality for the five years since the closure was implemented was 15 and 10 respectively. In fact, no takes have been observed for this time period.)
3. Estimated levels of leatherback entanglement and mortality were based on 3,000 sets annually even though the fishery had not seen anywhere near that level in recent years. (Dr. Gallaway pointed out that the total DGN fishing effort for the 11-year period from 1990-2000 reflects a statistically significant trend of decline with the effort reduction being on the order of 289 sets per year. Based on these data, the average fishing effort for the period 2001-2003 would be 1,697 sets.)
4. A sharp decline in leatherback entanglement rate corresponding with implementation of TRP regulations was not considered. (In the 1997

² Found at 50 CFR §660.713 (c)(1),

Biological Opinion, NMFS stated that it expected that the TRP's buoy line extender length requirement would have substantial benefits for sea turtles. This expectation appears to be borne out by the data. The observed take rate for leatherbacks in 1998 to 2000 was 80% lower than observed over 1995-1997, 66% lower than observed over 1992-to 1994, and 58% lower than observed over 1990-1991.)

Based on Dr. Gallaway's analysis, FISH petitioned NMFS to reevaluate the 2000 Biological Opinion. NMFS asserted that it had no authority under the law to conduct a reevaluation of leatherback takes by the DGN fishery absent a new management action to base it on. The Council's HMS FMP was being developed at this time, and FISH assumed that the Biological Opinion required for the FMP would also include a new evaluation of leatherback impacts by the DGN fishery. However, FISH learned that the ESA required Section 7 Consultation to be conducted in 2004 due to the implementation of the HMS FMP was going to evaluate leatherback impacts by the DGN fishery with the time/area closure in place. By so doing, the 2004 Biological Opinion would not reevaluate the basis for the 2000 time/area closure.

Before the 2004 Section 7 Consultation was initiated, FISH urged the Council to specify the scope of review for the DGN fishery,³ or alternatively, reframe the management action⁴ in order to provide a reevaluation of the basis for the time/area closure. The Council chose not to pursue this alternative and the time/area closure was adopted as an HMS FMP regulation.

The DGN fishery is now in serious decline because of that time/area closure. In 2000, before the time/area closure was implemented, 81 DGN vessels made 1,766 sets. The following year, 2001, after implementation of the closure, 65 vessels made 1,665 sets. In 2002, 54 vessels made 1,482 sets. In 2003, 46 vessels made 1,467. In 2004, 36 vessels made 1,084 sets.

FISH believes that sufficient new information is now available to warrant a review of the DGN time/area closure. The HMS Management Team has identified a number of management measures; the Team's preferred mechanism to implement some of these alternatives is within the context of issuing an EFP

³ In a May 4, 2003 letter to the Council, FISH requests: "Without changing the scope or intent of the management measure proposed for the CA/OR drift-gillnet fishery, for purposes of conducting the Section 7 Consultation, base the scope of review for the Biological Opinion on the implementation of the Pacific Offshore Cetacean Take Reduction Plan regulations for the CA/OR drift-gillnet fishery under current conditions, but without the leatherback and loggerhead closures."

⁴ In a May 28, 2003 letter to the Council, FISH attorney Eldon Greenberg ask the Council to consider adopting as its proposed action the management measures as they existed in the fishery *prior* to the implementation of the time/area closures which would ensure that the new Biological Opinion examined the DGN fishery under the same regulatory conditions that were evaluated in the 2000 Biological Opinion.

5. *Statement of whether the proposed exempted fishing has broader significance than the applicant's individual goals:*

If successful, the proposed EFP could result in longer-term regulatory action (i.e., allow fishing in the current closed area subject to the provisions in the EFP, including 100% observer coverage and turtle mortality caps), which could provide fishing opportunity to all DGN permit holders.

6. *Expected total duration of the EFP (number of years proposed to conduct exempted fishing activities):*

The EFP is proposed for a one-year period with the option for continuing it on an annual basis for up to three years pending review and evaluation.

7. *Number of vessels covered under the EFP and a copy of each vessel's USCG documentation, state license, and any other registration required for participation in the fishery:*

It is expected that between 10 and 25 vessels will participate in the EFP.

8. *Description of species (target and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the exempted fishing; this description should include harvest estimates of overfished species and effects on marine mammals and protected species:*

Regarding target species, swordfish, the principle species, is not subject to any harvest limits or controls. Other marketable species that may be caught include shortfin mako shark, common thresher shark, opah, louvar, albacore tuna, bigeye tuna, and bluefin tuna. None of these species, except shortfin mako shark and common thresher shark, are subject to harvest limits or controls. Bigeye tuna overfishing is occurring, and is addressed through regulations restricting the catch by purse seine and longline, but bigeye tuna are rarely caught by the DGN fishery.

(a total of 20 observed from 1990 to 2002).

No specific harvest limits are necessary for the EFP; however, there are harvest guidelines for common thresher shark and shortfin mako shark specified in the HMS FMP. All common thresher shark and shortfin mako shark caught in the EFP would count against those harvest guidelines. Additionally, thresher shark caught in the EFP will be subject to a landing limit of one thresher shark permitted for every two swordfish.

Regarding bycatch, the most common bycatch species is blue shark and common mola. Other likely bycatch species may include Pacific mackerel, bullet mackerel, and skipjack. They will be released alive when possible. None of

these species are subject to bycatch limits or controls. See Chapter 5.3.1 (page 3) of the HMS FMP for a complete list of bycatch species observed caught by DGN gear.

Regarding marine mammal impacts, a number of marine mammals have been observed entangled in DGN gear. Marine mammal mortality and serious injury have significantly decreased since the TRP was implemented in 1997 requiring the use of “pingers”, and deploying nets at a minimum of 36’ below the surface. Under the MMPA, the impact a fishery has on any specific stock is gauged by an upper limit known as the Potential Biological Removal (PBR) level for that stock. The immediate goal of the MMPA is to reduce fishery impacts to below PRB, with a secondary goal to reduce impacts to 10% of PBR or below. Currently, most species impacted by the DGN fishery remain below 10% of PBR, all but one species, the pilot whale, are below 50% of PBR, and the pilot whale is below PBR. NMFS has also determined that estimated mortality and serious injury to ESA listed marine mammals are negligible and do not jeopardize the continued existence of these species. See HMS FMP Chapter 6.2.1.1 (pages 13 – 16) for a complete list of marine mammals that have been observed taken in the DGN fishery.

Regarding seabird impacts, observer data from 1990 to 2000 show interactions with 16 northern fulmar, and 4 unidentified sea birds. Seabird impacts are rare and not expected to occur under the EFP.

Regarding sea turtle impacts, although loggerhead, leatherback and green sea turtles have been observed taken in the DGN fishery, only the leatherback has ever been observed taken in the area where the EFP will occur. This EFP will be subject to an annual cap on the number of leatherback takes and/or mortalities. The exact number will be the incidental take limit established by the Biological Opinion for this action. Should this cap be reached, all fishing under the EFP will cease for the remainder of the year.

9. *Description of mechanism, such as at-sea fishery monitoring, to ensure that the harvest limits for targeted and incidental species are not exceeded and are accurately accounted for:*

Mechanisms to ensure that a harvest limit or leatherback take/mortality limit is not exceeded include 100% observer coverage as well as real-time reporting for mandatory daily observer check-in each morning by equipping observers with portable satellite phones. Observers would keep a running tally of all shortfin mako shark, common thresher shark, or leatherback sea turtle mortalities in the EFP to ensure limits are not exceeded.

10. *Description of proposed data collection and analysis methodology:*

NMFS will provide 100% observer coverage to monitor compliance with provisions of the EFP, note fishing location, and interactions with turtles, marine mammals, and seabirds, including species identification and disposition of released animals. Other data collected will include current fishery reporting data (i.e., logbooks and fish receiving tickets) by the state and NMFS.

11. Description of how vessels will be chosen to participate in the EFP:

The EFP will be open to any FISH member vessel operating under a valid California or Oregon DGN permit that is not otherwise ineligible. Pending approval of the EFP, FISH will submit a list of participating vessels including all required documentation.

12. For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

The time and place covered by the EFP will correspond with the current leatherback time/area closure as may or may not be modified by Council action. The length of a trip is limited to 10 sets or 14 days, whichever comes first. Each trip, and all sets must occur under EFP terms and conditions and within the time/area closure. All DGN gear, and fishing operations will conform to all applicable regulations.

13. Signature of applicant:

EXEMPTED FISHERY PERMIT

1. *Date of application:*

February 13, 2006

2. *Applicant's name, address, and telephone numbers:*

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3. *Statement of the purpose and goals of the exempted fishing for which an EFP is needed, including a general description of the arrangements for the disposition of all species harvested under the EFP:*

The purpose of this EFP is to conduct a small scale (1 vessel) pelagic longline fishery within the West Coast EEZ to determine if longline gear is an economically viable HMS harvest substitute for drift gillnet (DGN) gear.

If pelagic longline proves to be an economically viable substitute for DGN, this information enables the Council to make informed management decisions regarding the phasing out of DGN and substituting longline thereby balancing the HMS FMP's management goals of providing a long-term, stable supply of high-quality, locally caught fish to the public, minimizing economic waste and adverse impacts on fishing communities, and providing viable and diverse commercial fishing opportunity for highly migratory species, while also managing the DGN fishery to prevent adverse impacts, and promote the recovery, of protected species.

Disposition of the species harvested under the EFP will be as follows:

- All marketable finfish species caught during the EFP may be retained and sold as prescribed through current regulations.
- Prohibited species may not be retained or sold.

4. *Justification explaining why issuance of an EFP is warranted:*

In 1996, the U.S. ratified a U.N. agreement ¹ concerning HMS which requires nations to “minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species,...[and] to the extent practicable, the development of selective environmentally safe and cost effective fishing gear and techniques.”

Closure of the DGN swordfish fishery, and substitution with pelagic longline, occurred in the North Atlantic because, with the two gears fishing side by side, longline was deemed to be a more selective, environmentally safe and cost effective fishing gear. The federal rule proposing a prohibition of DGN gear by NMFS in 1998 states: “The proposed rule is intended to reduce the take of marine mammals in the Atlantic swordfish fishery. Observer and vessel logbooks indicate that, in the Atlantic swordfish fishery, driftnet gear results in a significantly higher rate of take of protected marine mammals relative to other gear (i.e. pelagic longline and harpoon).” ² Also noted is that the Atlantic driftnet fishery has had takes of protected sea turtles, that the high take rates necessitate high levels of observer coverage, and that the fishery is difficult and costly to manage. The final rule prohibiting the use of driftnet gear in the north Atlantic swordfish fishery reiterates: “ The intent of the rule is to reduce marine mammal bycatch in the swordfish driftnet fishery while increasing the net benefits to the nation.” ³ This was accomplished by converting the Atlantic swordfish DGN permits to Atlantic pelagic longline permits.

In the Southern California Bight, a study evaluating an experimental drift longline shark fishery found that: “ This drift longline gear appeared to bring in less bycatch than the California drift gill net fishery. Observers recorded a total of 9 species captured on drift longline gear, whereas 71 species were documented from the drift gill net fishery (Hanan et al. 1993). Unlike fish caught in drift gill nets, most of the longline bycatch can be released alive.” ⁴

The California/Oregon DGN fishery continues in steep decline since the closure of a huge portion of its historic fishing grounds in 2000 to protect leatherback sea turtles. It continually operates under a threat of complete closure. A single observed mortality of a sperm, humpback, or fin whale, all of which have been previously taken in the DGN fishery, would revoke the MMPA §101(a)(5)(E) permit. ⁵ Given this level of vulnerability, the DGN fishery would be well served if an alternative fishery were available.

¹ The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

² 55998 Federal Register/ Vol. 63, No. 202 / Tuesday, October 20, 1998.

³ 4055 Federal Register / Vol. 64, No. 17 / Wednesday, January 27, 1999.

⁴ A Review Of The Southern California Experimental Drift Longline Fishery For Sharks, 1988-1991, John W. O'Brien and John S. Sunada, CalCOFI Rep., Vol. 35, 1994.

⁵ Under current MMPA guidelines, fishery takes above PBR for any ESA listed marine mammal would prohibit issuance, or revoke an existing §101(a)(5)(E) permit. With observed DGN takes extrapolated five times, one observed take equals 5. The PBR is 2.1 for sperm whales, 3.1 for

In fact, as indicated by HMS FMP permit DGN endorsements, California/Oregon DGN fishermen are interested in a longline option. Of the 131 HMS fishermen selecting a DGN endorsement on their HMS commercial fishing permit, 71 (54%) also selected a pelagic longline endorsement.

Comparing what is known about marine mammal, sea turtle and finfish bycatch in the DGN fishery to what is known about such takes in longline fisheries, it can be reasonably assumed that takes and/or mortalities of marine mammals will be substantially reduced with longline gear; sea turtle mortalities, if not overall takes, will also be substantially reduced with longline gear; and finfish bycatch (especially unmarketable shark), and mortality will be substantially reduced with longline gear.

There is little question that pelagic longline gear has less of an impact on sea turtles, marine mammals, and finfish bycatch. The only question is whether or not pelagic longline gear is economically viable as a substitute for DGN gear.

5. *Statement of whether the proposed exempted fishing has broader significance than the applicant's individual goals:*

If successful, the proposed EFP could result in longer-term regulatory action (i.e., substitution of DGN gear with longline) which could provide increased fishing opportunity, and economic benefit to all DGN permit holders.

6. *Expected total duration of the EFP (number of years proposed to conduct exempted fishing activities):*

EFP is proposed for a one-year period with the option for continuing it on an annual basis for up to three years pending review and evaluation.

7. *Number of vessels covered under the EFP and a copy of each vessel's USCG documentation, state license, and any other registration required for participation in the fishery:*

A single vessel, F/V Ventura II, will participate in this EFP. Ventura II is a 90' LOA steel hulled vessel, U.S. Document No. 536620. Copies of all required documents and permits will be submitted upon approval of the EFP.

8. *Description of species (target and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the exempted fishing; this description should include harvest estimates of overfished species and effects on marine mammals and protected species:*

humpback whales, and 3.2 for fin whales. Any single observed mortality of any of these endangered whales exceeds PBR.

Target species include swordfish (*Xiphias gladius*), bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), northern bluefin tuna (*Thunnus orientalis*), and albacore tuna (*Thunnus alalunga*). All are managed domestically under the PFMC HMS FMP. The Inter-American Tropical Tuna Commission also manages these species internationally, in the area east of 150°W longitude. Bigeye tuna is currently subject to overfishing, and the IATTC has recommended harvest limits for longline which have been imposed by NMFS through 2006. No other target species are subject to harvest limits. Estimated harvests of swordfish are from 15,000 to 40,000 lbs. The potential for tuna harvest also exists but projected amounts are impossible to predict due to lack of data.

Marketable bycatch species include mahi-mahi (*Coryphaena hippurus*), opah (*Lampris regius*), and shortfin mako shark (*Isurus oxyrinchus*). Blue shark (*Prionace glauca*) will comprise most of the non-marketable bycatch. It is expected that a high percentage of hooked blue shark will be dehooked and released alive.

Marine mammals that are known to inhabit the area within the EEZ, and have been observed taken in the Hawaii longline fishery, include: bottlenose dolphin (*Tursiops truncatus*), Risso's dolphin, short-finned pilot whale (*Globicephala macrorhynchus*), all hooked; and common dolphin (*Delphinus delphis*), humpback whale (*Megaptera novaeangliae*), and sperm whale (*Physeter macrocephalus*), all entangled.⁶

The short-tailed albatross (*Phoebastria albatrus*) is a rare visitor in the EFP proposed area. Combined Hawaii ('97 to '01) and California ('01 to '03) longline fishery observer data for 586 sets (444,833 hooks) east of 140°W longitude records no takes of Laysan albatross (*Phoebastria immutabilis*), and 41 takes of black-footed albatross (*Phoebastria nigripes*).⁷ However, specific deterrents have been identified that provide significant levels of sea bird protection. These deterrents are required pursuant to federal regulations⁸ and will be complied with under this EFP.

Due to the lack of take data by longline within the EEZ, impacts on sea turtles by longline gear can be somewhat projected from DGN observer data. Green turtles are rarely taken in the DGN fishery. Observer data from 1990 to 2000 records one take of a green sea turtle off south central California in November, 1999, and this take appears to be related to unusual environmental conditions.⁹ There are no takes or mortalities of green turtles within the EEZ expected under the EFP. Olive ridley turtles are also rarely taken in the DGN fishery. Observer

⁶ Hawaii Longline Fishery—Marine Mammal Interaction Summary, 1994-2002; Karin Forney, NMFS/SWFSC October 2002.

⁷ PFMC Exhibit F.2.b, NMFS Report, June 2003; An Analysis of Sea Turtle Take Rates in the High Seas Longline Fishery in the Eastern Pacific Ocean; James V. Carretta.

⁸ 50 CFR § 660.712(c)(1-17)

⁹ Biological Opinion on Issuance of Permit under Section 101(a)(5)(E) of the MMPA to the DGN Fishery, October 23, 2000, p.73.

data from 1990 to 2000 records one take of an olive ridley turtle off southern California in 1999, and this take also appears to be related to unusual environmental conditions.¹⁰ There are no takes or mortalities of olive ridley turtles within the EEZ expected under the EFP. Loggerhead turtles are infrequently taken in the DGN fishery. Observer data from 1990 to 2000 records 17 takes of loggerhead turtles, with 12 (70%) released alive, 1 (6%) injured, and 4 (24%) killed. All these takes occurred in a concentrated area south of San Clemente Island.¹¹ The proposed EFP will not operate in the vicinity of San Clemente Island. Therefore, there are no takes or mortalities of loggerheads within the EEZ expected under the EFP. DGN observer data from 1990 to 2000 records 23 takes of leatherback turtles, 14 were killed (61%), and 9 were released alive and uninjured (39%). All observed takes except one were north of Point Conception, and all were taken between September and January.¹² Worst-case scenario estimates of DGN take rate for leatherbacks is .009 per set. With an estimated 61% mortality from DGN gear, the estimated mortality rate is .005 per DGN set.¹³ For any given level of leatherback population density in a given area, it is difficult to predict what the probability of interaction would be between DGN and longline gears. An average net covers 792,000 square feet of area (5,280 ft x 150 ft.). The probability of interaction for a leatherback in the vicinity of DGN gear is probably very high. On the other hand, the probability of interaction for a leatherback in the vicinity of longline gear, where 1,000 hooks are spaced 200 to 250 feet apart is probably considerably less—especially because leatherbacks are not typically attracted to bait, but tend to be hooked externally when swimming by the gear. Nevertheless, using the worst-case scenario DGN take rate of .009 per set, and assuming the probability of interaction for a longline set is equal to a DGN set, expected leatherback takes within the EEZ under the EFP for 1,000 hook sets and 14 set trips would be .126 per trip, or .504 per season (14 set trips x 4 trips). Based on leatherback post hooking mortality estimate values of 10% when hooked externally and released with all gear removed, 0.012 mortalities per trip, or 0.050 mortalities per season would be expected within the EEZ under the EFP. Additionally, longline fishing operations under this EFP will comply with existing sea turtle take mitigation measures found at 50 CFR §660.712(b)

9. *Description of mechanism, such as at-sea fishery monitoring, to ensure that the harvest limits for targeted and incidental species are not exceeded and are accurately accounted for:*

At sea monitoring at 100% will be employed.

¹⁰ Biological Opinion on Issuance of Permit under Section 101(a)(5)(E) of the MMPA to the DGN Fishery, October 23, 2000, p.78.

¹¹ Biological Opinion on Issuance of Permit under Section 101(a)(5)(E) of the MMPA to the DGN Fishery, October 23, 2000, pp.75-76.

¹² This time period corresponds with the DGN season. DGN fishing is prohibited from January thru April.

¹³ Biological Opinion on Issuance of Permit under Section 101(a)(5)(E) of the MMPA to the DGN Fishery, October 23, 2000, pp.73-75.

10. *Description of proposed data collection and analysis methodology:*

NMFS will provide 100% observer coverage to monitor compliance with provisions of the EFP, note fishing location, and interactions with turtles, marine mammals, and seabirds, including species identification and disposition of released animals. Other data collected will include current fishery reporting data (i.e., logbooks and fish receiving tickets) by the state and NMFS.

11. *Description of how vessels will be chosen to participate in the EFP:*

Applicant's vessel will be the only vessel participating in the EFP.

12. *For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.*

EFP fishing will utilize traditional longline gear consisting of a main line strung horizontally across 50 to 100km of ocean, supported at appropriate intervals by 18m vertical float lines connected to surface floats. Descending from the main line is some number (2-25) of 24m branch lines each ending in a single baited hook. Longline gear configuration will be consistent with regulations enacted for the Hawaii longline shallow-set swordfish fishery found at 50 CFR §660.33(d),(f) & (g). For targeting swordfish, hooks used will only be offset circle hooks sized 18/0 or larger, with a 10° offset. For targeting tuna, smaller circle hooks with no offset will only be used. For targeting swordfish or tuna, only mackerel-type bait will be used, and no lightsticks will be used. From 400 to 1,200 hooks may be deployed per set. EFP fishing will not occur within 30 miles of the coastline, or within the southern California bight. Each trip will consist of about 14 sets, approximately 14,000 hooks per trip (1,000 hooks per set x 14 sets). This EFP proposes 4 trips (56,000 hooks) during the period September thru December.

13. *Signature of applicant:*

Pete Dupuy

Note: A large volume of public comment addressed both the Council action on the drift gillnet fishery, Agenda Item J.3, and review of exempted fishing permit application, Agenda Item J.4. Therefore, additional public comment relevant to this agenda item maybe found under Agenda Item J.3.

The following public comment is representative of 12 copies sent to the Council via email:

February 14, 2006

To: Council Members, Pacific Fisheries Management Council
Subject: Longline Exempted Fishing Permit Request

I am a concerned conservationist and angler and would like to take this opportunity to, again, voice my opposition to any attempts to develop a longline fishery off the coasts of California, Oregon and Washington. You have in the past acted prudently to keep this destructive gear out of our Pacific EEZ. Current attempts to open the door to as many as 131 new longline vessels in these waters would be disastrous for HMS stocks, both targeted and taken as bycatch. I support The Billfish Foundation in their opposition to this new source of fishing mortality. Given the current excess of fishing effort and fishing mortality applied to Pacific bigeye, yellowfin and albacore stocks there is no rational reason to even consider expanding existing fisheries. Do not recommend issuance of the proposed EFP for longline gear.

Sincerely,

Art Favre

P. O. Box 82285
Baton Rouge, LA 70884-2285
artf@performance-br.com

Subject: Longline Exempted Fishing Permit Request

From: "Inman's Auto Crash Repair Centre Ltd" <a.inman@inman.demon.co.uk>

Date: Fri, 10 Feb 2006 10:43:18 -0000

To: <pfmc.comments@noaa.gov>

Dear Sirs

I am a concerned conservationist and angler and would like to take this opportunity to, again, voice my opposition to any attempts to develop a longline fishery off the coasts of California, Oregon and Washington. You have in the past acted prudently to keep this destructive gear out of our Pacific EEZ. Current attempts to open the door to as many as 131 new longline vessels in these waters would be disastrous for HMS stocks, both targeted and taken as bycatch. I support The Billfish Foundation in their opposition to this new source of fishing mortality. Given the current excess of fishing effort and fishing mortality applied to Pacific bigeye, yellowfin and albacore stocks there is no rational reason to even consider expanding existing fisheries. Do not recommend issuance of the proposed EFP for longline gear.

Regards

Andrew Inman.

Inman's Auto Crash Repair Centre Ltd.



THE BILLFISH FOUNDATION

CONSERVATION THROUGH RESEARCH, EDUCATION AND ADVOCACY

2161 E. Commercial Blvd, 2nd Floor • Fort Lauderdale, Florida 33308
177 Riverside Ave., Suite F, #1034 • Newport Beach, California 92663
(954) 938-0150 • (800) 438-8247 • Fax (954) 938-5311

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PFMC

February 9, 2006

Mr. Donald K. Hansen, Chair
Pacific Fishery Management Council
7700 NE Ambassador Pl., Suite 200
Portland, OR 97220-1384

Dear Mr. Hansen:

I am taking this opportunity to comment on behalf of The Billfish Foundation on the application for a proposed Exempted Fishing Permit (EFP) that would allow for the use of longline gear in the EEZ under the jurisdiction of the Pacific Fishery Management Council (PFMC) submitted by Ocean Pacific Seafood. It is our understanding that this issue will be considered by the PFMC during your March meeting in Seattle.

TBF believes that it would be inappropriate to approve the requested EFP given the current condition of several stocks and the current context of international management of these fisheries. We note that, even though the application requests an EFP for a single 90 foot longline vessel, the application in question raises the possibility of developing a future longline fishery with a potential of utilizing 71 to 134 vessels.¹ This potential application of latent effort to a new EEZ fishery for tuna species not currently targeted by the existing drift gill net (DGN) fishery is a real cause for concern to existing U.S. recreational and commercial fisheries and all those in our country interested in the conservation of our oceans' valuable resources.

We refer in particular to bigeye, yellowfin and albacore tuna, named as three of the five potential target species in the EFP application. As the Council is aware, all three of these species are currently being exploited at fishing mortality rates above levels estimated to produce average maximum sustainable yield (AMSY)² and all three are subject to management measures intended to constrain effort and fishing mortality under resolutions of the Inter-American Tropical Tuna Commission (IATTC). We strongly believe that any direct expansion of effort or mortality directed at these species is not consistent with the conservation goals established by the PFMC and the IATTC.

¹ Ocean Pacific Seafood Exempted Fishing Permit Application, p. 3; October 6, 2005.

² Fishery Status Report 3, Tunas and Billfishes of the Eastern Pacific in 2004; Inter-American Tropical Tuna Commission, La Jolla, 2005.

The most recent report by the IATTC's stock assessment working group reveals that current levels of fishing mortality for yellowfin tuna are at 120% of the level that would produce AMSY.³ The report concludes that "... it is likely that the stock (biomass) is below the AMSY level." Bigeye tuna fishing mortality rates are at 175% of the level that would produce AMSY and the same report states that consequently total biomass and spawning biomass of the stock are at the lowest levels observed in the time period considered (1975-2005). This assessment report is by no means overly conservative. In fact the authors note that had spawner:recruit relationships been used in the baseline analyses the results would have been more pessimistic.

The same assessment report addressed north Pacific albacore tuna stocks. It concluded that current spawning stock biomass is below the level expected to produce AMSY and that biomass may decline if "... current levels of F persist." The assessment results for these three species are not new or unexpected, but rather have been predicted by previous assessments in recent years.

In response to this scientific advice the IATTC has enacted resolutions dealing with tuna conservation, concluding in 2004 that "... the studies of yellowfin and bigeye tuna presented at this meeting show that both stocks are at a level below that which would produce the average maximum sustainable yield (AMSY)."⁴ Longline quotas are in place for bigeye tuna with the existing U.S. commercial fleet limited to its Pacific catch total from 2001. In fact, the U.S. fleet has been prematurely shut down in the last two years because this cap was reached. Seasonal closures to purse seine fishing for yellowfin and bigeye are also in place.

In the June 2005 meeting the IATTC concluded that the best scientific evidence on North Pacific albacore tuna from the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean indicates that the species is either fully exploited, or may be experiencing fishing mortality above levels that are sustainable in the long term. The Commission subsequently passed a resolution that calls for:

- 1) The total level of fishing effort for North Pacific albacore tuna in the Eastern Pacific Ocean not be increased beyond current levels, and
- 2) The CPCs shall take necessary measures to ensure that the level of fishing effort by their vessels fishing for North Pacific albacore tuna is not increased.⁵

Allowing for the development of anew albacore fishery in the Pacific EEZ would not be consistent with this measure.

The PFMC has responded to these actions and has asked that the HMSAS begin considering means of complying with the ban on increased albacore effort and, in November, deferred discussion of bigeye tuna conservation measures until the March meeting. Given the current status of bigeye, yellowfin and albacore stocks there is clearly no logical rationale for attempting to develop new sources of effort and fishing mortality through the issuance of an EFP for longline gear in the Pacific EEZ.

³ Ibid.

⁴ IATTC Resolution C-04-09

⁵ IATTC Resolution C-05-02

TBF thanks you all for taking the time to consider our comments and trusts that the council will agree that the current biological condition of these stocks, taken into consideration in the context of existing U.S. fisheries does not warrant a recommendation to issue the requested EFP. TBF has supported the development and implementation of the PFMC's HMS Plan from the beginning and looks forward to continuing a constructive relationship with the Council.

Sincerely yours,



Ellen M. Peel
President

EP:rsn

CC: Bill Hogarth
Rod McKinnis
Bill Fox
David Hogan

Donna Greenberg

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PFMC

February 9, 2006

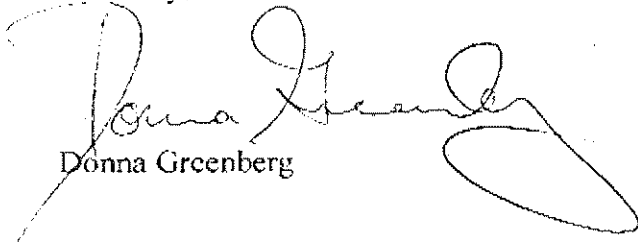
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220-1384
VIA FAX

To: Council Members, Pacific Fisheries Management Council
Subject: Longline Exempted Fishing Permit Request

I am a concerned conservationist and angler and would like to take this opportunity to, again, voice my opposition to any attempts to develop a longline fishery off the coasts of California, Oregon and Washington. You have in the past acted prudently to keep this destructive gear out of our Pacific EEZ. Current attempts to open the door to as many as 131 new longline vessels in these waters would be disastrous for HMS stocks, both targeted and taken as bycatch. I support The Billfish Foundation in their opposition to this new source of fishing mortality. Given the current excess of fishing effort and fishing mortality applied to Pacific bigeye, yellowfin and albacore stocks there is no rational reason to even consider expanding existing fisheries. Do not recommend issuance of the proposed EFP for longline gear.

Thank you for your consideration to this important matter.

Sincerely,



Donna Greenberg

Subject: Longline exempted fishing permit
From: Cawlegend@aol.com
Date: Mon, 13 Feb 2006 13:35:39 EST
To: pfmc.comments@noaa.gov

Gentlemen

I oppose the issuance of this permit. Do not vote for it.

Craig Whitehead. M.D.

7606 Nacido Ct.

Tampa, FL 33615