

EXEMPTED FISHING PERMITS (EFP) FOR 2007-2008 SEASON

Council Operating Procedure (COP) #20 lays out the schedule and procedures for review of EFP applications. COP #20 states that EFP applications for the next fishing year (in this case April 1, 2007-March 31, 2008) must meet the deadline for the June briefing book. Any applications received are reviewed by the Highly Migratory Species Management Team (HMSMT) and Highly Migratory Species Advisory Subpanel (HMSAS), who make recommendations to the Council for action. The Council takes final action on EFP applications at the September meeting, which constitutes a recommendation to National Marine Fisheries Service (NMFS) for issuing the permit.

No new applications were received for the 2007–2008 fishing year. However, there are two outstanding EFP applications. The HMSMT has proposed a schedule for reviewing these proposals that would defer Council consideration until later this year or early next (see Agenda Item E.2.b, HMSMT Report).

The Council already took preliminary action on the first EFP application, which was initially submitted to the Council for consideration for the current fishing year. (Attachment 1 is the application that was submitted for the March 2006, Council meeting as Agenda Item J.4.a, Attachment 2.) However, at the time of Council action in March 2006 the applicant, Mr. Pete Dupuy, asked that the application instead be considered for the 2007 fishing year. At the March meeting, the Council gave preliminary approval to the application, pending the preparation of an environmental assessment. The HMSMT is proposing to present a set of alternatives for implementing this EFP to the Council at the November 2006 meeting, at which time the Council would take action about whether to proceed with the application. The HMSMT would then prepare a draft environmental assessment to support final Council action at the March 2007 meeting. (See Agenda Item E.2.b, HMSMT Report.)

The second EFP for Council consideration is the continuation in 2007 of the drift gillnet (DGN) fishery EFP the Council has approved for 2006. Attachment 2 is a letter from Mr. Chuck Janisse of the Federation of Independent Seafood Harvesters (FISH) indicating his interest in continuing the EFP in 2007. As he states, the original application approved by the Council at the March 2006 meeting proposed the EFP for 2006–2008 with annual review and approval of its continuation by the Council. However, because the EFP will be conducted from August 15 to November 15, 2006, the HMSMT is recommending that the Council defer consideration of a continuation of the EFP in 2007 (when it would again be conducted from August 15 to November 15) until the November 2006 meeting. If continued, any proposed modifications to the EFP would be presented at the March 2007 Council meeting. This would allow the Council to review information on the results of the EFP in 2006.

Attachment 3 is a letter from Mr. Rodney McInnis, Regional Administrator, NMFS Southwest Region. When the Council took final action on the 2006 DGN EFP, they recommended imposing caps on six marine mammal species (sperm, humpback, minke, fin, gray and short-finned pilot whales), which would shut down the fishery if one animal was seriously injured or

killed. However, NMFS informed the Council that they would only apply these caps to three species (sperm, humpback, and short-finned pilot whales). In response to the Council's displeasure at this modification, Mr. McInnis instructed his staff to revisit the issue and the letter outlines the results of this review.

Council Action:

Provide guidance and/or approve HMSMT's proposed process and schedule for consideration of drift gillnet and longline EFPs for 2007.

Reference Materials:

1. Agenda Item E.2.a, Attachment 1: EFP application submitted by Mr. Pete Dupuy and originally included as Agenda Item J.4.a, Attachment 2 for the March 2006 Council meeting.
2. Agenda Item E.2.a, Attachment 2: Letter from Chuck Janisse indicating desire to extend current drift gillnet EFP into 2007.
3. Agenda Item E.2.a, Attachment 3: Letter from Mr. Rodney McInnis about 2006 DGN EFP
4. Agenda Item E.2.b, HMSMT Report.
5. Agenda Item E.2.c, Public Comment.

Agenda Order:

- a. Agenda Item Overview Kit Dahl
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. **Council Action:** Preliminary Adoption of Proposed EFPs for the 2007-2008 Season

PFMC
05/26/06

EXEMPTED FISHERY PERMIT

1. *Date of application:*

February 13, 2006

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

Pete Dupuy
18212 Rosita St.,
Tarzana, CA 91356

(818) 343-9927
FAX: (818) 881-5003
lapazkd@aol.com

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

Federation of Independent Seafood Harvesters

PO Box 352
Bridgewater Corners, VT 05035

May 15, 2006

Donald Hansen
Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220-1384

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MAY 16 2006

Dear Don,

The Federation of Independent Seafood Harvesters (FISH) extends its heartfelt thanks for the Council's forward thinking March decision to approve the exempted fishery permit (EFP) we proposed for the HMS driftnet fishery (DGN).

We believe that the regulation enacted in 1997 requiring DGN nets to be a minimum distance of 36 feet below the sea surface—allowing a space for surface swimming marine mammals to pass over a net—also reduces sea turtle interactions. Such a reduction is supported by available data: The observed take rate for leatherbacks from 1998 to 2004, the time during which the minimum net depth regulation was in effect, is 0.015 per set. The take rate for the period 1990 to 1997, when the minimum net depth requirement was not in effect, is 0.088 per set. The observed leatherback take rate before the minimum net depth requirement was enacted is 5.9 times greater than after this regulation was implemented. However, since leatherback take is such a rare event, the above referenced data is insufficient for producing a statistically significant comparison of before and after take rates. We believe that this DGN EFP will eventually produce sufficient data to provide a statistically significant answer to the question of whether or not the 36-foot minimum net depth regulation reduces sea turtle entanglement, and give the Council a more robust scientific basis to structure appropriate protective measures.

Of course, a single season's EFP fishing effort will not generate a sufficient amount of data. It is for this reason that the DGN EFP is proposed to run for the 2006, 2007, and 2008 DGN fishing seasons. Under the terms of the approved DGN EFP, the Council would consider DGN fishery performance under the 2006 EFP, in advance of approving the EFP for 2007. Since results of the 2006 DGN EFP will not be available until after the November 15 termination of EFP fishing activity, the Council will not have this information before their April or March 2007 meetings. We suggest scheduling this issue for the March 2007 Council meeting, which will give the HMSMT and HMSAP sufficient time to review the 2006 EFP outcome—recommend any adjustments, or

modifications for Council consideration—and give NMFS sufficient time to complete NEPA and ESA requirements.

As you may not know, over the past two years FISH has donated \$20,000.00 to ASUPMATOMA, a Mexican organization dedicated to sea turtle conservation work, in support of their efforts to increase survivability of eastern Pacific leatherbacks nesting at Aguas Blancas beach in southern Baja. FISH continues to be actively involved in the implementation of marine resource conservation measures, and we are excited about the resource conservation benefits the DGN EFP may produce. We thank you again for supporting FISH in this effort and we look forward to a successful outcome from this work.

Respectfully,

A handwritten signature in cursive script that reads "Janisse".

Chuck Janisse, on behalf of the Federation of Independent Seafood Harvesters



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

NATIONAL MARINE FISHERIES SERVICE

Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802- 4213

MAY 09 2006

F/SWR2:MH

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

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MAY 10 2006

FMC

Dear Mr. Hansen:

On March 29, 2006, I sent a letter to the Pacific Fishery Management Council (Council) explaining my decision to tentatively accept only a portion of the Council's preferred alternative for the proposed exempted fishing permit (EFP) for the drift gillnet (DGN) fishery, adopted at the March meeting. I decided not to accept the proposed mortality or serious injury cap of one fin, one minke, and one gray whale. I based this decision on the impact to the stocks relative to the most recent estimates of potential biological removal (PBR) levels for fin, minke, and gray whales at 15, 5.8, and 442 respectively.¹ The Marine Mammal Protection Act (MMPA) requires that a PBR level be calculated for each marine mammal stock under U.S. jurisdiction. The PBR is an estimate of the total amount of human-caused mortalities (and serious injuries) that each stock can sustain annually while still maintaining or increasing its current population. For most marine mammal stocks, the primary source of anthropogenic mortality and serious injury is fisheries.

I used the PBRs as part of my review of the Council's proposed caps to serious injury or mortality of one fin, one minke, and one gray whale in the proposed DGN EFP. Based upon our best available science, I made a preliminary determination that the caps for these three species were unnecessarily restrictive and recommended that they be removed from the proposed action for the DGN EFP. I did, and still do, support the Council's recommendation that the cap of one serious injury or mortality be implemented for short-finned pilot, humpback, and sperm whales, based upon the relatively low PBRs for each of these stocks.

At the April Council meeting in Sacramento, California, several Council members expressed concern about my preliminary decision. Based on their comments, which the Southwest Regional Office takes very seriously, I instructed my staff to revisit the issue.

¹ Carretta, J. V., K. A. Forney, M. M. Muto, J. Barlow, J. Baker, B. Hanson, M. S. Lowry. 2006. U.S. Pacific marine mammal stock assessments, 2005. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-SWFSC-388.



They examined stock assessment reports to determine whether other limits on the take of fin, minke and gray whales should be imposed on the DGN EFP, particularly in consideration of other fishery and non-fishery threats to these marine mammals. A summary of their review follows.

The fin and minke whales that may interact with the DGN fishery are considered Washington/Oregon/California (WA/OR/CA), including Baja, California, Mexico stocks. That is, the ranges of these stocks appear to be limited primarily to the waters off these states. For the WA/OR/CA stock of fin whales, only the DGN fishery has been identified as a definite source of fishery mortality and there has been one observed take in 15 years. There are likely unquantified mortalities and serious injuries of fin whales in the drift gillnet and longline fishery off Baja, California Mexico and ship strikes (the current average observed mortality from ship strikes is 0.4 fin whales per year). The current PBR for this stock is 15 animals per year. The most recent mean annual takes in U.S. commercial fisheries is one. Fin whales are listed as an endangered species and therefore will be included in the consultation being conducted for this EFP.

For the WA/OR/CA stock of minke whale, the DGN fishery, the Washington Puget Sound salmon gillnet fishery, and California angel shark/halibut fisheries are the only fisheries that have been identified in which minkes may occasionally be taken. The Puget Sound salmon gillnet fishery is not currently observed, although vessels in this fishery are known to co-occur in the minkes' summer feeding areas. There has been low observer coverage on the California angel shark small mesh gillnet fishery in limited years, so NMFS is preparing to place observers on vessels in this fishery for the 2006 season. Other unquantified sources of anthropogenic mortality include ship-strikes and takes in the Mexican drift gillnet/longline fishery. The status of this stock is unknown. The most recent annual estimate of human-caused observed mortalities is zero and the PBR is 5.8 animals per year. The most recent mean annual take in U.S. commercial fisheries is zero. Minke whales are not a listed species.

Gray whales range from the waters off Alaska and Russia to Baja California, Mexico; thus this eastern north Pacific stock is potentially exposed to fisheries across a wide range of North America. This eastern north Pacific stock may interact with fisheries along the entire west coast. Seven fisheries, including the DGN fishery, have either observed or self-reported incidental takes of gray whales. This stock is also subjected to aboriginal harvests of an average of 122 gray whales per year. Limited ship strike mortality has also been observed. The estimated annual level of human-caused mortality is 130.4 although this number does not include the average 6.7 strandings per year (1999-2003).

The eastern Pacific stock of gray whales has been increasing over the past 20 years. There are impacts from Canadian fisheries, and the incidents of take in unobserved fisheries may be underestimated and cannot be quantified. However, these threats do not appear to be affecting the population's ability to increase. The current PBR for this stock is 442 animals per year. The most recent minimum total fishery-related annual

mortality/serious injury is estimated to be 7.4 gray whales². This species was delisted under the ESA in 1994.

The anticipated levels of incidental take for fin, minke, and gray, whales in the DGN fishery is quite low. As noted in the draft Environmental Assessment (EA) prepared for the issuance of the DGN EFP, anticipated levels of take are estimated to be around one fin, one minke, and one gray whale per year. These estimates were based upon the level of observed take of these three species in the entire DGN fishery, one, three and three observed takes, of fin, minke, and gray whales respectively, in over 7,000 observer sets. My staff reviewed the numbers provided in the draft EA and projected that the anticipated incidental take of these three whale species is likely less than one fin whale, one minke whale and one gray whale per year in the entire DGN fishery (including fishing under the proposed EFP). The low expected take is based upon a combination of 15 years of data collected in the DGN fishery observer program and knowledge of the distribution and general life history patterns of these species. This anticipated low rate of take is consistent with the current incidental take statement for fin whales in the 2004 Highly Migratory Species Fishery Management Plan biological opinion, the only species of these three to be listed under the Endangered Species Act (ESA). The anticipated incidental take identified in the 2004 opinion is four fin whales entangled in three years, with an estimated mortality of two fin whales in three years.

I am mindful of the Council's concern over the incidental take of fin, minke, and gray whales. While I believe it is reasonable to predict that levels of take in the DGN EFP will be less than one, I am aware that the incidental take of marine mammals and other species is dependent upon a number of variables, including changes in oceanographic and climatic conditions, areas fished, and methods used. Scientists at the Southwest Fisheries Science Center are examining the relationships between these variables to better predict fishery impacts on protected species. With this in mind, I am modifying my original recommendation for the DGN EFP. I am recommending that if a serious injury or mortality of one fin whale, one minke whale, or one gray whale event occurs, the SWR will immediately initiate a review of the incident. The Take Reduction Team (TRT) for this fishery may also be contacted and consulted for review and recommendations to ensure that the DGN EFP operates consistently with the requirements of the MMPA and ESA.

For each of these stocks, the current status was reviewed along with the total anthropogenic sources of mortalities and serious injuries. My recommendations are based upon the possible relative impact of the DGN EFP and to ensure that the overall annual mortalities and serious injuries in U.S. fisheries remain at a rate below each stock's PBR. As you are well aware, balancing the needs of conserving species while supporting and promoting fisheries is an on-going challenge. I appreciate the Council's sensitivity to these challenges and trust that the Council agrees that these conditions, to

² Angliss, R. P., and R. B. Outlaw. 2005. Alaska marine mammal stock assessments, 2005. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-AFSC-161, 250 p.

be imposed on the pending DGN EFP, address the concerns expressed at the April 2006 Council meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney R. McInnis". The signature is fluid and cursive, with the first name "Rodney" being the most prominent.

fox Rodney R. McInnis
Regional Administrator

cc: William Fox, SWFSC

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON
EXEMPTED FISHING PERMITS FOR 2007-2008 SEASON

The Council has received two exempted fishing permit (EFP) applications for the 2007-2008 fishing year: 1) a continuation of the drift gillnet EFP, submitted by Mr. Chuck Janisse on behalf of the Federation of Independent Seafood Harvesters; and 2) a longline EFP, submitted by Mr. Pete Dupuy. In March, the Council approved the drift gillnet EFP for 2006, and the Team recommended that continuation of the drift gillnet EFP for 2007 be contingent upon a review of the results of the 2006 EFP. As this EFP is scheduled to begin in August, pending final approval by the National Marine Fisheries Service (NMFS), the final results will not be available until the end of the year. Depending on the results of the drift gillnet EFP in 2006, the Council may wish to consider changing and/or adding provisions to the EFP; therefore, the Biological Opinion being prepared by NMFS is for the 2006 fishing year only. Continuation of the drift gillnet EFP in 2007 would require additional Council action, re-consultation, and a new Biological Opinion.

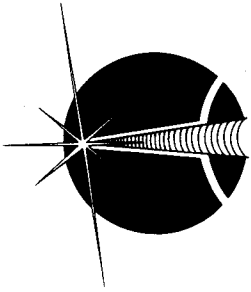
Also in March, the Council advanced the longline EFP for consideration. Similar to the drift gillnet EFP process for this year, the Team would develop a draft Environmental Assessment (EA) with alternatives for the Council's consideration.

The HMSMT proposes the following process and schedule for these EFPs:

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|----------|---|
| Nov 2006 | NMFS and California Department of Fish and Game present draft report on 2006 drift gillnet EFP to Council; Council consider whether to proceed with drift gillnet EFP in 2007 |
| | HMSMT present alternatives for longline EFP to Council; Council consider whether to proceed with longline EFP in 2007; if so, then approve the alternatives for public review and task the HMSMT with preparing an Environmental Assessment (EA) |
| Mar 2007 | NMFS and California Department of Fish and Game present final report on 2006 drift gillnet EFP to Council; HMSMT presents any proposed modifications to the 2007 drift gillnet EFP to Council; Council consider approving the modifications for public review |
| | HMSMT present draft EA for longline EFP to Council; Council select preferred alternative for longline EFP and transmit their recommendation to NMFS |
| Apr 2007 | If necessary, HMSMT present draft EA for drift gillnet EFP to Council; Council take final action on drift gillnet EFP and transmit their recommendation to NMFS |

HMSMT Recommendation:

1. Provide guidance and/or approve HMSMT's proposed process and schedule for consideration of drift gillnet and longline EFPs for 2007



Eye Consultants
of Huntington, Inc.

Craig M. Morgan, MD

May 15, 2006

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PFMC

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

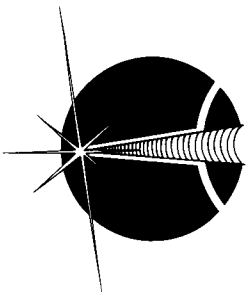
Dear Mr. Hansen:

I am taking this opportunity to comment on 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.

I believe 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.

I 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). I 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.

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.



Mr. Donald K. Hansen
page 2
May 15, 2006

I thank you all for taking the time to consider my comments and trust 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.

Sincerely,

Craig M. Morgan, M.D.

CMM/ej