

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT  
ON FISHERY MANAGEMENT PLAN AMENDMENT 5 FINAL ACTION AUTHORIZING  
FEDERAL DRIFT GILLNET PERMIT

Background

In August 2003, the Pacific Fishery Management Council (Council) published the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS), which the National Marine Fisheries Service (NMFS) partially approved in February 2004. The FMP adopted all existing state and Federal management measures, placing the fishery under Federal authority, with the exception of the Oregon and California drift gillnet (DGN) permits, which were left under state issuance.

In March 2014, the Council requested that NMFS provide a report “on issues and possible solutions to more comprehensively placing a transitioning swordfish fishery under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) authority, including Federal permit options that would replace the current California State permit regime” ([Council Decision Summary Document, March 2014](#)). NMFS and the California Department of Fish and Wildlife provided a joint report to the Council in June 2014 to address this request. ([June 2014 Agenda Item E.2.b, Supplemental NMFS-CDFW Report](#)).

The Highly Migratory Species Management Team (HMSMT) was tasked with developing a range of alternatives for a Federal DGN permit ([Council Decision Summary Document, June 2016](#)) which the Council adopted in September 2016 ([Council Decision Summary Document, September 2016](#)). The alternatives included a no action alternative (status quo) and Alternative 1, Federalization of DGN permitting as currently issued by the State of California.

Implications for Future Management of the DGN Fishery

The proposed transition from the California limited entry (LE) DGN permit to a Federal LE DGN permit is purely administrative in nature and does not increase capacity within the DGN fishery, nor would it incentivize or stimulate fishing effort or activity of current latent permits. As with the California LE DGN program, no additional permits would be issued and permits that are not renewed would cease to exist. Implementing a Federal LE DGN permit program would finalize action initiated during adoption of the 2004 HMS FMP and streamline management of the U.S. West Coast swordfish fisheries.

Establishing a Federal LE DGN permit program would also complete one of the actions identified in the Council’s draft Swordfish Management and Monitoring Plan (SMMP). The purpose of the draft SMMP (see [September 2015 Agenda Item G.2, Attachment 1](#)) is “to minimize bycatch and bycatch mortality of finfish and protected species (including sea turtles, marine mammals, and seabirds) to the extent practicable while ensuring that the West Coast swordfish fishery remains economically viable.” The plan outlines potential future actions to be taken by the Council to achieve this purpose, including the implementation of a Federal LE permit for the DGN fishery. Identifying DGN fishery capacity and using a Federal LE DGN permit to make it easier to transition DGN fishery participants to other gear types are related actions according to the draft SMMP. Implementing a Federal LE DGN permit would allow for a more holistic management

approach and provide the Council with the flexibility to address such future management measures for the swordfish fishery. Further, establishing a Federal LE DGN permit would support more efficient management. These actions would undergo the Council process and continue to allow California to participate in the management of the DGN fishery through its representation on the Council and its advisory bodies.

#### Amendments to the HMS FMP

Implementing a Federal LE DGN permit program would require an amendment to the HMS FMP. Proposed LE DGN amendment language, provided in [Agenda Item J.6, Attachment 2](#), includes housekeeping changes which are also proposed under Amendment 4 to the HMS FMP. The Council could adopt all of these proposed changes, including those that overlap with Amendment 4. Alternatively, the Council could adopt only the changes that relate to a Federal LE DGN permit program. The HMSMT offers LE DGN amendment language in the Appendix to this report which does not include overlap with Amendment 4. The language includes management measures that would implement a Federal LE DGN permit program and some minor revisions to existing HMS FMP text.

#### Recommendations

- 1) Adopt Alternative 1 as the Council's Final Preferred Alternative
- 2) Adopt LE DGN amendment language as outlined in the Appendix

## **Appendix: Proposed LE DGN Amendment Language**

- In Section 6.2.5, *Permits*, add the following language:  
*For individuals fishing with drift gillnet gear, a Federal limited entry drift gillnet (DGN LE) permit is required. These Federal DGN LE permits are subject to the following conditions:*
  - *DGN LE permits are issued to an individual, and a vessel must be specified on the permit.*
  - *DGN LE permits are issued annually for the fishing year starting April 1 and ending March 31 of the following year.*
  - *Upon publication of NMFS' final rule to establish the Federal DGN permit, all California DGN permit holders would be eligible for a Federal DGN permit. If a 2017-2018 state permit renewal application is not received by CDFW or postmarked by March 31, 2018, the permit holder will not be eligible to receive a 2018-2019 Federal DGN permit.*
  - *Thereafter, the deadline for receipt or postmark of a Federal DGN permit renewal application would be April 30 of the fishing year (e.g., April 30, 2019 for the April 1, 2019 - March 31, 2020 fishing year).*
  - *A DGN permit that has expired will not be renewed unless the permit owner requests reissuance by July 31 (three months after the renewal application deadline) and NMFS determines that failure to renew was proximately caused by illness, injury, or death of the permit owner. If the permit expires, it will be forfeited and NMFS will not reissue the permit to anyone.<sup>1</sup>*
  - *DGN LE permits can be transferred at most once every three fishing years. For the purpose of determining transfer eligibility, the fishing year starts April 1 and ends March 31 of the following year.*
  - *DGN permits may be transferred to another individual only if the current permit holder has held the Federal DGN LE permit for a minimum of three consecutive years (counted April 1 to March 31 of the following year). At the time of the establishment of the Federal DGN LE permit system, the length of time an individual has held a California drift gillnet limited entry permit carries over (e.g., if an individual has held a California drift gillnet limited entry permit for 2 years, they are eligible to transfer the Federal DGN LE permit after 1 year). Exceptions to this limitation on permit transfer may be made under the following circumstances:*

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<sup>1</sup> These renewal deadlines (April 30 and July 31) for the Federal DGN permit differ from the state permit renewal deadlines but are consistent with procedures for other Federal permits. Compared to the state DGN permit, the July 31 deadline imposes a shorter renewal window period and does not provide a mechanism to appeal for reinstatement in the event of a failure to renew.

- *The permittee suffers from a serious illness or permanent disability that prevents the permittee from earning a livelihood from commercial fishing.*
    - *If the permittee's heirs or estate submit a transfer request within six months of the permittee's death.*
    - *Upon dissolution of marriage if the permit is held as community property.*
  - *A permit holder may designate another individual to fish under their permit for up to 15 days per year; the substitute must hold a valid general HMS permit and comply with all other Federal permitting requirements.*
- In section 1.6.4, *Relationship to Existing Fishery Management*, remove sentences 3 and 4.
  - ~~“For example, the drift gillnet fishery is currently subject to controls under California law and regulations and under Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA) regulations. To obtain the complete set of regulations, a fisher would have to go to three sources.”~~
- In section 2.4, *Fixed Elements of the Fishery Management Plan*, remove sentence 2 in bullet point 5.
  - ~~“This FMP does not propose a Federal limited entry program for any HMS fishery at this time.”~~
- In section 6.2.1, *Drift Gillnet Fishery Management Measures*, revise paragraph 1 to remove a reference to California state regulations.
  - “The drift gillnet fishery for swordfish and shark (14" minimum mesh size) is managed under numerous complex and detailed Federal and state regulations to protect the populations fished as well as the protected species incidentally taken. These regulations are described in Appendixes B and C to the original FMP FEIS (PFMC 2003), the latter being the California code for fishing swordfish and shark with minimum stretched mesh of 14 inches required.”
- In section 6.2.1, in the *State Restrictions* subsection, the second to last paragraph would require minor changes. The second half of the first sentence would be revised.
  - “This FMP endorses or adopts in the FMP all Federal conservation and management measures in place under the MMPA and ESA; adopts all state regulations for swordfish/shark drift gillnet fishing under Magnuson-Stevens authority ~~except limited entry programs (which will remain under states' authority)~~; modifies an OR closure inside 1000 fm (or way point equivalent) to be in effect year round; closes EEZ waters off WA to all drift gillnet fishers; and continues the current turtle protection closure north of Point Sur, CA to 45° N latitude (August 15 to November 15).”
  - The second to last sentence would also be revised to include clarifying language (“However, at the time of the original adoption of the FMP, the Council

concluded it was premature to Federalize the states' limited entry programs, with its increase in Federal costs and administrative burdens.”).

- In section 6.2.5, *Permits*, remove sentence 2 in the last paragraph.  
“~~However, no limited entry systems are proposed at this time.~~”

PFMC  
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