

Federation of Independent Seafood Harvesters

PO Box 352
Bridgewater Corners, VT 05035

April 14, 2005

RECEIVED

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

APR 18 2005

PFMC

Dear Don,

For the reasons stated below, FISH requests the PFMC to direct the HMS Management Team to review DGN fishery restrictions implemented by the HMS FMP to conserve leatherback sea turtles.

An October 2000 Biological Opinion conducted by the NMFS is the basis for implementation of a DGN fishery time/area closure to protect leatherback sea turtles. The California Seafood Council contracted with Dr. Benny Gallaway to conduct an independent scientific analysis of data contained in the 2000 Biological Opinion. Dr. Gallaway's analysis of data supporting the leatherback time/area closure 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 overbroad time/area restriction that was imposed.
3. Estimated levels of leatherback mortality were based on 3,000 DGN sets annually even though the fishery had not seen anywhere near that level in recent years.
4. A sharp decline in leatherback take rate corresponding with implementation of Take Reduction Plan regulations was not considered.

Based on Dr. Gallaway's analysis, FISH petitioned the NMFS to conduct a reevaluation of the 2000 Biological Opinion. The NMFS claimed they had no authority to do a reevaluation. They said that a new Biological Opinion would be done at such time as a new federal action involved the DGN fishery. The PFMC's HMS FMP was being developed at this same time,

and it was thought that the Biological Opinion required for the FMP would also include a new evaluation of the DGN fishery based on current conditions. This did not happen. Despite FISH's appeals, NMFS said the Biological Opinion for the HMS FMP would evaluate the DGN fishery with the leatherback time/area closures in place. In order to prevent this approach, FISH petitioned the PFMC to reframe the FMP's DGN management action by either specifically requesting that the Biological Opinion's scope of review consider the DGN fishery under current conditions but without the leatherback time/area closure in place, or, more directly, remove the leatherback time/area closure from the FMP's proposed DGN fishery regulations, thereby ensuring an evaluation of the DGN fishery under current conditions. Unfortunately, the PFMC did not reframe the proposed DGN fishery management actions at that time, and the Biological Opinion for the FMP simply carried forward the results of the 2000 Biological Opinion.

The HMS FMP now implements a leatherback time/area closure based on the 2000 Biological Opinion's projected impacts to leatherback sea turtles by a DGN fishery making 3,000 sets annually, when the NMFS used a figure of 2,000 sets annually for purposes of assessing the economic impacts of the closure (*66 Fed. Reg. at 44551*), and the actual level of effort in 2000 was more like 1,500 sets. Today, five years later, the level of effort in the DGN fishery is probably less than 1,000 sets annually. Given this substantial reduction in DGN effort, FISH requests the PFMC to direct the HMS MT to reevaluate the basis for a leatherback time/area closure in order to ensure that this fishery is not being needlessly restricted.

Respectfully,



Chuck Janisse

cc. Dale Squires, HMS MT
Bob Fletcher, HMS AP

Federation of Independent Seafood Harvesters

PO Box 352
Bridgewater Corners, VT 05035

May 11, 2005

Don Hansen, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Pl., Suite 200
Portland, OR 97220-1384

RECEIVED

MAY 13 2005

PFMC

Dear Don,

In our letter of April 14, 2005 we asked the Council to direct the HMS management team to review a drift gillnet (DGN) fishery restriction implemented by the HMS FMP to protect leatherback sea turtles.

This restriction is a time/area closure identified in an October 2000 biological opinion as necessary for the DGN fishery to avoid jeopardizing the continued existence of leatherback sea turtles. An independent scientific review¹ of that biological opinion questioned the validity of the jeopardy determination. But, despite our repeated efforts to convince them otherwise, NMFS stood by the jeopardy finding, and the existing closure was promulgated under an interim final rule on August 24, 2001 (*66 Fed. Reg. 44549*), and implemented at 50 CFR §223.206(d)(6).

Two years later, as management actions under the HMS FMP were being finalized, and NMFS began its ESA evaluation of the FMP, FISH was confident that the new biological opinion would be based on the greatly reduced level of DGN fishing effort in the two years since the previous ESA evaluation, and would likely result in a no jeopardy determination.

In response to learning that NMFS intended to base its ESA evaluation for the FMP on the DGN fishery under the existing closure,² FISH urged the Council, in a May 4, 2003 letter, to instruct NMFS to conduct its ESA evaluation of the FMP on conditions in the fishery as it existed in 2003 for estimating leatherback mortality. A subsequent May 28, 2003 letter takes a more direct approach by asking the Council to eliminate the leatherback closure provision from the DGN management measures to ensure that

¹ Gallaway, B.J.; 2001; Leatherback Sea Turtles and the California/Oregon Drift Gillnet Fishery.

² By so doing, NMFS evaluates whether the existing DGN closure results in jeopardy. The 2004 biological opinion determined no jeopardy, and the existing closure based on conditions in the fishery as it existed in 2000 is maintained without consideration of conditions in the fishery as it existed in 2003.

NMFS's new biological opinion would conduct a fresh evaluation of DGN impacts on leatherback sea turtles under conditions that represented the fishery as it existed at that time. The Council did not respond to FISH's requests, and the 2004 biological opinion for the HMS FMP carried the existing leatherback time/area closure forward and incorporated it into the HMS FMP regulations (*69 Fed. Reg. 18444*), that is now implemented at 50 CFR §660.713(c)(1).

A group of DGN fishermen met with NMFS in April 2003 to voice their view that the leatherback time/area closure was overly restrictive. It was pointed out that in the three-year period since the closure was implemented, there had not been a single observed leatherback take. The 2000 Biological Opinion allows for 6 leatherback mortalities during this period. NMFS has recently agreed to conduct a fresh ESA evaluation of the DGN fishery as it currently exists pending the PFMC's recommendation of a management action that would trigger such a review.

The HMS FMP's regulations may be modified in the future, or new regulations may be implemented, using framework adjustment procedures and standards contained in section 8.3.4 of the FMP.³ Assuming that the Council will utilize framework adjustment procedures to address this issue, FISH presents for the Council's consideration a preferred and three alternative DGN management alternatives, and an EFP that has been submitted for Council review. Apart from whether or not the EFP may be approved at a later time by a separate Council action, an ESA and NEPA evaluation is required, and is best done in conjunction with other management actions impacting ESA listed species.

PREFERRED:

FISH recommends elimination of the leatherback time/area closure altogether. We understand that this change would only be implemented if the new biological opinion determined that this action would not jeopardize leatherbacks. Based on a simple comparison of the DGN leatherback CPUE of .0038 for the period 1990 through 1997 to a CPUE of .0012 for the period 1998 through 2000⁴ there is some indication that setting nets deeper reduces leatherback takes. We further recognize that the above referenced CPUEs are derived from total effort in the fishery rather than effort stratified for the area north of Point Conception in which all but one of the leatherbacks takes have been observed. We expect that the appropriate CPUE analysis will be conducted and the results used to estimate leatherback impacts under the various management alternatives. That said, FISH recommends complete elimination of the time/area closure as a starting point. Should jeopardy result, the following alternatives, in order of preference, may be considered for implementation as a reasonable and prudent alternative.

ALTERNATIVE 1:

Should complete elimination of the time/area closure result in jeopardy, FISH recommends an alternative closure in which the time element of the closure is

³ 50 CFR §660.717(d)

⁴ During this period, 50 CFR §229.31 is in effect. It requires a drift net to be set with the top of the net at a minimum depth of 36 feet below the surface.

the same (August 15 through November 15), and the area element of the closure is changed to: from the California coastline at 36° 18.5' North Latitude (Point Sur), west to 129° West Longitude, north to 40° North Latitude, and east to the California coastline. Structuring a closure inside of these coordinates protects the locations where 13 of the 18 leatherback takes in the existing time/area closure occurred.

ALTERNATIVE 2:

Should the area closure noted above result in jeopardy, FISH recommends an alternative closure in which the time element of the closure is the same (August 15 through November 15), and the area element of the closure is changed to: from the California coastline at 36° 18.5' North Latitude (Point Sur), west to 129° West Longitude, north to 41° North Latitude, and east to the California coastline. Structuring a closure inside of these coordinates protects the locations where 14 of the 18 leatherback takes in the existing time/area closure occurred.

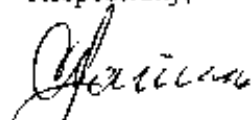
ALTERNATIVE 3:

Should the area closure noted above result in jeopardy, FISH recommends an alternative closure in which the time element of the closure is the same (August 15 through November 15), and the area element of the closure is changed to: from the California coastline at 36° 18.5' North Latitude (Point Sur), west to 129° West Longitude, north to 45° North Latitude, and east to the Oregon coastline. Structuring a closure inside of these coordinates protects the locations where 17 of the 18 leatherback takes in the existing time/area closure occurred.

EXEMPTED FISHERY PERMIT:

FISH recommends that the new biological opinion include an evaluation of the estimated impacts to ESA listed species from the EFP ⁵ in addition to the estimated impacts of the DGN closure alternatives noted above. FISH recognizes that the estimated impacts from the EFP may affect whether or not the estimated impacts from any of the DGN closure alternatives listed above fall within acceptable limits. It is not FISH's position to sacrifice DGN fishing opportunity for the EFP. However, FISH believes that the EFP will provide important information that may be of great future benefit to the fishery, and encourages NMFS to consider methods or alternatives that will allow this information to be gathered without compromising DGN fishing opportunity.

Respectfully,



Chuck Janisse,

cc: Rod McInnis, NMFS Southwest Region

⁵ EFP submitted by Pete Dupuy includes preliminary evaluation of the efficacy of substituting long line gear for DGN gear in order to increase the Council's options for addressing DGN management issues.

Federation of Independent Seafood Harvesters

PO Box 352
Bridgewater Corners, VT 05035

May 11, 2005

Don Hansen, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Pl., Suite 200
Portland, OR 97220-1384

RECEIVED

MAY 13 2005

PFMC

Dear Don,

In our letter of April 14, 2005 we asked the Council to direct the HMS management team to review a drift gillnet (DGN) fishery restriction implemented by the HMS FMP to protect leatherback sea turtles.

This restriction is a time/area closure identified in an October 2000 biological opinion as necessary for the DGN fishery to avoid jeopardizing the continued existence of leatherback sea turtles. An independent scientific review¹ of that biological opinion questioned the validity of the jeopardy determination. But, despite our repeated efforts to convince them otherwise, NMFS stood by the jeopardy finding, and the existing closure was promulgated under an interim final rule on August 24, 2001 (*66 Fed. Reg. 44549*), and implemented at 50 CFR §223.206(d)(6).

Two years later, as management actions under the HMS FMP were being finalized, and NMFS began its ESA evaluation of the FMP, FISII was confident that the new biological opinion would be based on the greatly reduced level of DGN fishing effort in the two years since the previous ESA evaluation, and would likely result in a no jeopardy determination.

In response to learning that NMFS intended to base its ESA evaluation for the FMP on the DGN fishery under the existing closure,² FISII urged the Council, in a May 4, 2003 letter, to instruct NMFS to conduct its ESA evaluation of the FMP on conditions in the fishery as it existed in 2003 for estimating leatherback mortality. A subsequent May 28, 2003 letter takes a more direct approach by asking the Council to eliminate the leatherback closure provision from the DGN management measures to ensure that

¹ Gallaway, B.J.; 2001; Leatherback Sea Turtles and the California/Oregon Drift Gillnet Fishery.

² By so doing, NMFS evaluates whether the existing DGN closure results in jeopardy. The 2004 biological opinion determined no jeopardy, and the existing closure based on conditions in the fishery as it existed in 2000 is maintained without consideration of conditions in the fishery as it existed in 2003.

NMFS's new biological opinion would conduct a fresh evaluation of DGN impacts on leatherback sea turtles under conditions that represented the fishery as it existed at that time. The Council did not respond to FISH's requests, and the 2004 biological opinion for the HMS FMP carried the existing leatherback time/area closure forward and incorporated it into the HMS FMP regulations (*69 Fed. Reg. 18444*), that is now implemented at 50 CFR §660.713(c)(1).

A group of DGN fishermen met with NMFS in April 2003 to voice their view that the leatherback time/area closure was overly restrictive. It was pointed out that in the three-year period since the closure was implemented, there had not been a single observed leatherback take. The 2000 Biological Opinion allows for 6 leatherback mortalities during this period. NMFS has recently agreed to conduct a fresh ESA evaluation of the DGN fishery as it currently exists pending the PFMC's recommendation of a management action that would trigger such a review.

The HMS FMP's regulations may be modified in the future, or new regulations may be implemented, using framework adjustment procedures and standards contained in section 8.3.4 of the FMP.³ Assuming that the Council will utilize framework adjustment procedures to address this issue, FISH presents for the Council's consideration a preferred and three alternative DGN management alternatives, and an EFP that has been submitted for Council review. Apart from whether or not the EFP may be approved at a later time by a separate Council action, an ESA and NEPA evaluation is required, and is best done in conjunction with other management actions impacting ESA listed species.

PREFERRED:

FISH recommends elimination of the leatherback time/area closure altogether. We understand that this change would only be implemented if the new biological opinion determined that this action would not jeopardize leatherbacks. Based on a simple comparison of the DGN leatherback CPUE of .0038 for the period 1990 through 1997 to a CPUE of .0012 for the period 1998 through 2000⁴ there is some indication that setting nets deeper reduces leatherback takes. We further recognize that the above referenced CPUEs are derived from total effort in the fishery rather than effort stratified for the area north of Point Conception in which all but one of the leatherbacks takes have been observed. We expect that the appropriate CPUE analysis will be conducted and the results used to estimate leatherback impacts under the various management alternatives. That said, FISH recommends complete elimination of the time/area closure as a starting point. Should jeopardy result, the following alternatives, in order of preference, may be considered for implementation as a reasonable and prudent alternative.

ALTERNATIVE 1:

Should complete elimination of the time/area closure result in jeopardy, FISH recommends an alternative closure in which the time element of the closure is

³ 50 CFR §660.717(d)

⁴ During this period, 50 CFR §229.31 is in effect. It requires a drift net to be set with the top of the net at a minimum depth of 36 feet below the surface.

the same (August 15 through November 15), and the area element of the closure is changed to: from the California coastline at 36° 18.5' North Latitude (Point Sur), west to 129° West Longitude, north to 40° North Latitude, and east to the California coastline. Structuring a closure inside of these coordinates protects the locations where 13 of the 18 leatherback takes in the existing time/area closure occurred.

ALTERNATIVE 2:

Should the area closure noted above result in jeopardy, FISH recommends an alternative closure in which the time element of the closure is the same (August 15 through November 15), and the area element of the closure is changed to: from the California coastline at 36° 18.5' North Latitude (Point Sur), west to 129° West Longitude, north to 41° North Latitude, and east to the California coastline. Structuring a closure inside of these coordinates protects the locations where 14 of the 18 leatherback takes in the existing time/area closure occurred.

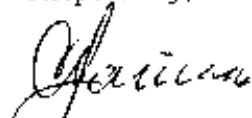
ALTERNATIVE 3:

Should the area closure noted above result in jeopardy, FISH recommends an alternative closure in which the time element of the closure is the same (August 15 through November 15), and the area element of the closure is changed to: from the California coastline at 36° 18.5' North Latitude (Point Sur), west to 129° West Longitude, north to 45° North Latitude, and east to the Oregon coastline. Structuring a closure inside of these coordinates protects the locations where 17 of the 18 leatherback takes in the existing time/area closure occurred.

EXEMPTED FISHERY PERMIT:

FISH recommends that the new biological opinion include an evaluation of the estimated impacts to ESA listed species from the EFP ⁵ in addition to the estimated impacts of the DGN closure alternatives noted above. FISH recognizes that the estimated impacts from the EFP may affect whether or not the estimated impacts from any of the DGN closure alternatives listed above fall within acceptable limits. It is not FISH's position to sacrifice DGN fishing opportunity for the EFP. However, FISH believes that the EFP will provide important information that may be of great future benefit to the fishery, and encourages NMFS to consider methods or alternatives that will allow this information to be gathered without compromising DGN fishing opportunity.

Respectfully,



Chuck Janisse,

cc: Rod McInnis, NMFS Southwest Region

⁵ EFP submitted by Pete Dupuy includes preliminary evaluation of the efficacy of substituting long line gear for DGN gear in order to increase the Council's options for addressing DGN management issues.