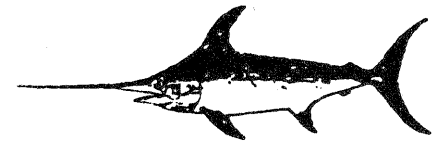


## Ocean Pacific Seafood

18212 Rosita St.  
Tarzana, CA 91356  
(818) 343-9927  
Fax (818) 881-5003  
E-mail: LaPazKD@aol.com



**RECEIVED**

OCT 14 2005

**PFMC**

October 11, 2005

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

Dear Chair,

In accordance with the terms for submission contained in the Council's draft Interim Protocol for Consideration of Exempted Fishery Permits for HMS Fisheries, I enclose an Exempted Fishery Permit (EFP) for Council Review.

Chapter 8.5.2 of the HMS FMP establishes a general prohibition on the use of pelagic longline gear in the EEZ, implemented under 50 CFR §660.712(a)(1), with the stated intent to avoid and/or prevent potential bycatch, protected species, and fishery competition problems. This intent would be realized should the enclosed EFP produce information affirming the economic viability of HMS drift gillnet gear substitution with pelagic longline gear, which has been observed to bring in less bycatch than the HMS drift gillnet fishery, as well as substantially reducing marine mammal and endangered sea turtle impacts.

I think you will agree that conservation of marine mammals, sea turtles, as well as finfish, is of the utmost importance, and management actions to this end should be vigorously investigated at all cost. I believe the EFP I enclose falls within this category.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Dupuy". The signature is fluid and cursive, written over the printed name.

Pete Dupuy

Cc: William Hogarth  
Rod McInnis  
Fran Pavley

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## EXEMPTED FISHERY PERMIT

1. *Date of application:*

October 6, 2005

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<sup>1</sup> 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 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).”<sup>2</sup> 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 that: “The intent of the rule is to reduce marine mammal bycatch in the swordfish driftnet fishery while increasing the net benefits to the nation.”<sup>3</sup> 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.”<sup>4</sup>

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 is also only a bad day away from the potential for 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)

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<sup>1</sup> 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.

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

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

<sup>4</sup> 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.

permit.<sup>5</sup> Given this level of vulnerability, the DGN fishery would be well served if an alternative fishery were available.

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 other 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.

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<sup>5</sup> 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 humpback whales, and 3.2 for fin whales. Any single observed mortality of any of these endangered whales exceeds PBR.

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:*

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. 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. Other than bigeye tuna, none of the managed target species is being overfished.

Marketable bycatch species include mahi-mahi (*Coryphaena hippurus*), opah (*Lampris regius*), and shortfin mako shark (*Isurus oxyrinchus*). Blue shark (*Prionace glauca*) is 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.<sup>6</sup>

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*).<sup>7</sup> However, specific deterrents have been identified that provide significant levels of sea bird protection. These deterrents are required pursuant to federal regulations<sup>8</sup> 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

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

<sup>7</sup> 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.

<sup>8</sup> 50 CFR § 660.712(c)(1-17)

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.<sup>9</sup> 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 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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 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.

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

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

<sup>11</sup> 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.

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

<sup>13</sup> 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.

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.

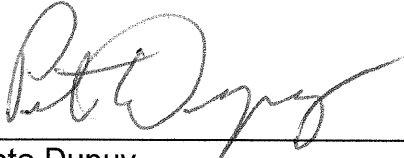
*11. Description of how vessels will be chosen to participate in the EFP:*

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, which may or may not include various colored light sticks. From 400 to 1,200 hooks may be deployed per set. 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 November thru March.

*13. Signature of applicant:*



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Pete Dupuy