

Federation of Independent Seafood Harvesters

PO Box 352
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DRAFT EXEMPTED FISHING PERMIT APPLICATION

1. *Date of application:*

October 6, 2005

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 MMPA and MBTA and promote the recovery of any species listed under the 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 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 previously managed under California statutory provisions, DGN fishery management issues since 1996 have been driven by federal requirements to protect marine mammals and ESA listed species. When the HMS FMP adopted the DGN fishery, it also included existing federal DGN regulations for gear configuration and 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 protect incidentally caught marine mammals. These regulations require DGN fishermen 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 gear is set. The HMS FMP also adopted the DGN closure implemented in 2001; ² to protect ESA listed leatherback sea turtles.

¹ TRP regulations can be found at 50 CFR 229.

² Found at 50 CFR §660.713 (c)(1),

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 as opposed to a take rate of .004 for nets with extenders equal to or greater than 36', and used the latter rate for estimating future 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, observed in 1995, was used to estimate future 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 a 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 four years since the closure was implemented was 12 and 8 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 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 said they 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 force 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

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

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.

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):*

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 cap on leatherback mortality will take the place of a limit on the number of vessels. It is expected that between 10 and 25 vessels will participate in the EFP. All required information for each participating vessel will be collected and appended to the EFP's annual report.

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 since bigeye tuna are rarely caught (a total of 20 observed from 1990 to 2002) there is negligible impact on bigeye tuna by the DGN fishery.

(HMSMT will work on PacFIN extractions to estimate harvest of target species.)

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 pose jeopardy to 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 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 mortality limit is not exceeded include 100% observer coverage as well as real-time reporting options for mandatory daily observer check-in each morning by either equipping observers with portable satellite phones, or arranging for a shore-based marine band high frequency radio station. If the costs, or logistics, of these real-time reporting systems is too high, vessels may be required to cease fishing and return to port when there is a leatherback mortality. 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: