



**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

MAR 29 2006

Dr. Donald McIsaac  
Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384

Dear Don,

This letter is in response to the Pacific Fishery Management Council's (Council) recent decision to recommend that NOAA's National Marine Fisheries Service (NMFS) approve and issue an exempted fishing permit (EFP) to allow drift gillnet vessels, permitted by the State of California, to fish in an area currently closed under Federal regulations at 50 CFR 660.713 (c)(1), as part of the Highly Migratory Species Fishery Management Plan. I would like to thank the Council and their advisory bodies for their work on this EFP application and preparation of a comprehensive draft Environmental Assessment. I would also like to thank the Council members for their sensitivity to protected resources concerns in making their final recommendations on the EFP application. As you know, the current closure was implemented due to projected high take levels of endangered leatherback sea turtles. Take of marine mammals has also been a concern in the drift gillnet (DGN) fishery prior to the 2001 closure. Thus, I appreciate that the Council adopted a preferred alternative that includes management and mitigation measures to limit bycatch of protected species and require 100% observer coverage of vessels operating under the EFP.

Following receipt of your letter, I asked my staff to conduct an initial review of the Council's preferred alternative for consistency with the best available science and federal guidelines for processing EFP applications. Based upon their initial review of the preferred alternative, I recommend that the proposed action be modified and the serious injury or mortality cap on fin whales, gray whales and minke whales be eliminated. I have outlined the rationale for this decision below.

The Council's recommendation for the proposed EFP includes a limit of one serious injury or mortality for the following marine mammal species: short-finned pilot whale, sperm whale, humpback whale, fin whale, gray whale, and minke whale. Short-finned pilot whales, sperm whales, and humpback whales have been observed incidentally taken in the area of the current closure, north of Point Conception, California. Observer coverage of 20% has been mandatory in the DGN fishery since 1990. These three stocks currently have very low potential biological removal (PBR) levels. The PBR is the estimated highest level of annual anthropogenic removal of individuals from a stock which will allow that stock to reach or maintain its optimal sustainable population. The PBR for each stock will change based upon changes in its estimated




minimum population and status. The current PBRs for short-finned pilot whale, sperm whale, and humpback whale, to be published in the "U.S. Pacific Marine Mammal Stock Assessments: 2005," are 1.2, 1.8, and 2.3 animals, respectively. In order to avoid exceeding the PBR for these stocks, a serious injury and mortality cap of one individual from each stock, approved by the Council as part of their recommendation for the EFP, is appropriate and supported by the agency's best available science.

The current PBRs for fin whale, gray whale, and minke whale are 15, 442, and 5.8 animals, respectively. These species have not been observed taken in the closed area. Therefore, it is unlikely that fishing under the proposed EFP would result in serious injury or mortality at levels that would approach the PBR for these marine mammal stocks. Based upon the best available science, NMFS' Southwest Regional Office (SWR) has determined that the serious injury and mortality cap of one fin whale, one gray whale and one minke whale is not necessary and has therefore removed these caps from the proposed EFP action that the agency will consider for issuance.

The SWR will be following established procedures for review of this EFP application, as described in 50 CFR 660.745. The modified proposal will be subjected to an Endangered Species Act (ESA) section 7 consultation, which will evaluate whether the proposed action is likely to jeopardize the continued existence of listed species. A determination on whether or not to issue the EFP will be based, in part, on the outcome of the consultation.

Again, I thank the Council for their work on providing a well-thought out proposed action to provide fishing opportunity to DGN fishers. I look forward to working with you as the SWR continues its review of this EFP application.

Sincerely,

  
for Rodney R. McInnis  
Regional Administrator

cc: Chuck Janisse, Federation of Independent Seafood Harvesters