

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON FEDERALIZATION OF PERMITS FOR THE DRIFT GILLNET FISHERY

Introduction

At its April 2014 meeting, the Council discussed creating a Federal limited entry (LE) permit under Magnuson-Stevens Fishery Conservation and Management Act (MSA) authority for drift gillnet (DGN) vessels, which would phase out or supersede the current California state permit program, thereby giving the Council and National Marine Fisheries Service (NMFS) more control over the number of participants, permit transfer provisions, and other management particulars in the fishery. At the June 2014 Council meeting, a [Supplemental NMFS-CDFW Report](#) under Agenda Item E.2, Drift Gillnet Fishery Transition Issues, further explored creation of a Federal DGN LE permit. At this meeting, the Council established a control date of June 23, 2014, that may be used as a reference for allocation decisions when considering potential future management actions to limit the number of participants in the DGN fishery.

Further action to create a Federal DGN LE permit was put on hold while the Council worked on other priority highly migratory species actions including DGN hard caps and deep-set buoy gear (DSBG) development. However, with the introduction of proposed state bills AB2019 and SB1114, both of which aimed to end the DGN fishery off of California, industry representatives again voiced their concern over leaving permitting authority with the state, and brought federalization of the DGN permits back to Council attention. At its June 2016 meeting, the Council adopted a motion to take up federalizing DGN permits as currently structured in the state permitting system. In its March 2016 [report on Future Council Meeting Agenda and Workload Planning](#), the HMSMT suggested pairing DGN permit federalization and DSBG authorization as one action. The Council's June 2016 motion uncoupled this pairing since the Council felt that the DGN permit component could be quickly and easily addressed instead of considering it on the longer DSBG authorization timeline, and acted accordingly.

The HMSMT offers a description of the proposed action, proposes a purpose and need for the action, and proposes a range of alternatives for the Council's consideration.

Proposed Action

The proposed action is to create a Federal DGN permit which would mirror and replace the current state of California DGN LE permit.

Proposed Purpose and Need

The purpose of the proposed action is to rapidly and simply transition DGN permitting to MSA authority. This would provide the Council more control over future management measures including DGN permit transfer provisions, permit qualifications, and participation.

The proposed action is needed to better-coordinate DGN management under the HMS FMP. Leaving permitting with the state adds a degree of uncertainty, as state bills can and have been introduced which would materially impair the Council's ability to manage the fishery.

Proposed Range of Alternatives (ROA) for DGN Permit Federalization

In its June 2016 motion, the Council directed the HMSMT to develop a Range of Alternatives (ROA) to federalize DGN permitting including at least these two alternatives:

No Action Alternative: Status quo.

The Council would not move forward with creating a Federal DGN permit. DGN permitting would continue under the state of California LE permit program.

Alternative 1: Federalization of DGN permitting as currently issued by the state of California.

As soon as possible after Council final action, only fishers authorized to fish with large-mesh drift gillnet gear under state law would be entitled to a NMFS commercial HMS permit endorsed for drift gillnet.

The HMSMT interprets this to mean that fishers who hold valid state DGN permits on the date of Final Rule publication would be eligible to possess a HMS DGN endorsement.

While the Council's motion did not limit the ROA to only these two, the HMSMT feels that in keeping with the intent of the Council's motion and consistent with the HMSMT's proposed purpose and need to rapidly and simply transition permitting authority, these are the only alternatives which the Council should consider at this time.

Alternatives Discussed but not Further Considered

The HMSMT discussed further alternatives that could be considered as part of this action. However, the HMSMT feels that these alternatives do not meet the stated intent of the Council's motion to quickly move forward with creating a Federal DGN permit. Further, these alternatives do not meet the HMSMT's proposed purpose and need for this action. These alternatives would add complexity to the action which would require greater analysis and delay Council final action and implementation. Considerations such as permit latency, renewals, transfers, etc. can be addressed at a later time, should the Council deem it necessary. The alternatives discussed, but not given further consideration include:

1. Limit Federal DGN permits to a number less than that currently issued by California, reducing latent effort in the DGN fishery. This would require developing a range of alternatives for LE qualification criteria, an application period, an appeals process, and other components of an LE permit program. Addressing such a complex system at this time would undermine the original direction to swiftly address Federal DGN permitting. Further, reducing the number of DGN permits has the potential to create significant economic losses for current state permit holders who do not receive a Federal DGN permit.
2. Use the June 23, 2014 control date as a cutoff to determine state permit holders eligible for a Federal DGN permit. The permittee list has changed substantially since 2014, with numerous un-renewed permits and several transfers to new fishery participants. Ten current permit holders who either renewed after the control date in 2014 or have received a transferred permit may challenge this action since they would not be eligible for a Federal DGN permit.

This has the potential to significantly delay creation of a Federal DGN permit, contrary to the intent of the Council’s June 2016 motion.

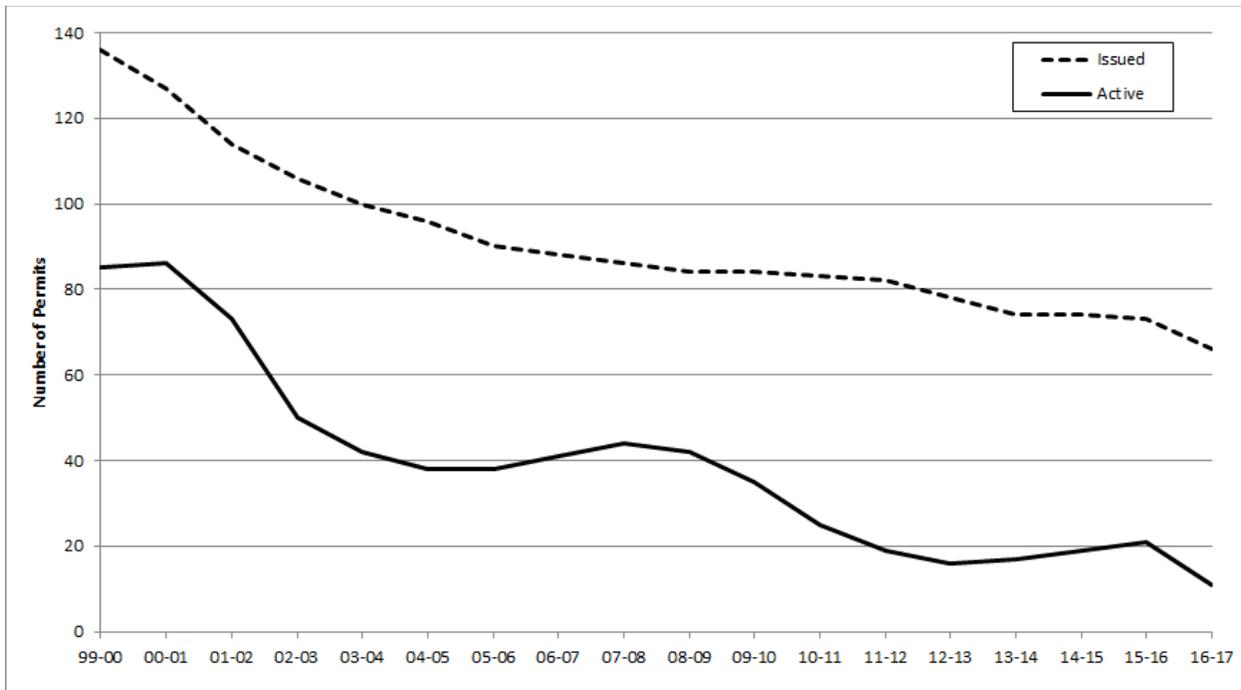
Additional Information

Permit Activity

The Council also expressed interest in updated DGN permit activity to give context to the federalization of the state DGN permits, as some Council members have expressed interest in reducing the number of latent permits. It is the HMSMT’s understanding that information regarding DGN permit activity will be provided in a California Department of Fish and Wildlife supplemental report for September, therefore, the HMSMT has only included the below figure as a summary of permit activity. The HMSMT would also like to reiterate that while some permits may not be actively fished, the holders renew them on a yearly basis in order to retain the future opportunity to fish. Reduction of latent permits has potential to cause negative economic impacts on permit holders who have complied with state regulations in order to maintain this opportunity. The analysis required to accurately assess impacts of such an action would require time to develop; therefore the HMSMT recommends the Council take up permit latency at a later date, should it be a consideration the Council would like to address.

Figure 1 shows the number of issued permits and number of active permits by season. Active permits are defined as those which landed swordfish with large mesh DGN at least once during a season. (See [March 2014 Agenda Item K.5.b HMSMT Report](#) for past permitting information).

Figure 1. Permit activity for the California large mesh drift gillnet fishery.



Source: CDFW, data extracted from CFIS on 08/016/2016. 2015-2017 data preliminary. Note: Data may differ from previous reports as updated information has become available.

Permit Transferability

Council discussions on the floor included the topic of permit transferability. While Council members expressed a desire for the HMSMT to provide alternatives for permit transfer, the HMSMT felt that it needed more clarification on the Council's intent for transferability before an ROA could be developed.

It is the HMSMT's understanding that if the Council decides to federalize the state DGN permits and California, as a result, ceases to issue the current permits, permit holders for the new Federal DGN endorsement would still be required to hold a California-issued state general gillnet (GGN) permit. Like the state DGN permit, the GGN permit system is LE and has numerous restrictive requirements for transfer of permits. This being the case, the HMSMT feels that at this time addressing transferability of Federal DGN permits is not critical; while the Federal endorsement could allow transfer to anyone with a Federal HMS permit, only those individuals that also hold a California GGN permit would be able to fish under their Federal DGN endorsement, thus continuing to limit the pool of eligible fishermen to that which already exists.

However, the HMSMT does acknowledge that the Council may wish to develop a different transfer scheme. As there is no immediate need, the HMSMT recommends the Council adopt a date in the near future to take up transferability, possibly alongside other components of the DGN fishery that the Council would like to address (such as latency).

Recommendations

The HMSMT recommends the following:

1. The Council adopts the HMSMT's proposed purpose and need as the purpose and need for this action.
2. The Council adopts the HMSMT's proposed range of alternatives for public review.
3. The Council identifies its preliminary preferred alternative.
4. The Council schedules taking up DGN endorsement transferability at a future meeting.

PFMC
08/23/16