

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE REPORT ON FEDERALIZATION OF DRIFT GILLNET
PERMITTING

At its June 2016 meeting the Council requested a range of alternatives to analyze a process to federalize drift gillnet (DGN) permits by transitioning the existing California state issued permit program to federally issued endorsements. A number of questions have been raised in advisory body and other discussions about regulatory actions which would be needed by California for consistency with a new federal permit program.

Currently, the Highly Migratory Species Fishery Management Plan (HMS FMP) defers permitting for the California DGN fishery to the state, and relies on California statute grandfathered in when federal management of the fishery was assumed under the HMS FMP.

Should the Council finalize a recommendation to federalize permits for the California DGN fishery, existing California statutes governing the fishery would be needlessly duplicative once a federal permit requirement is established and takes effect. In anticipation of a federal permit scheme, it will be necessary to ensure that state laws surrounding the DGN permit are repealed or amended for consistency. California Department of Fish and Wildlife (CDFW) has received a number of questions on how this action would proceed in the state arena.

State Process for Amending/Repealing Legislation for Consistency

The California Legislature established permits for the DGN fishery, and existing laws governing permit issuance and transfers are established in California Fish and Game Code (FGC). In the event action is taken to federalize DGN permits, the State legislature may need to amend or repeal existing statutes, or the Department may pursue regulatory action.

Progress in the federal regulatory arena would influence the timing of any state legislative effort, although the Legislature will begin a new two-year session in January 2017. If legislative action is needed, appropriate language should be included in a bill by mid-2017 so that the change could take effect January 1, 2018. CDFW will keep relevant legislators and policy staff apprised of developments at the federal level to ensure familiarity with the issues and provide advance knowledge that legislation may be needed.

While there are a number of ways to accomplish this, one of the simplest would be to add language to the FGC in 2017, to take effect January 1, 2018, to provide that the relevant state code sections would become inoperative upon implementation of the federal regulations. The clause might read:

(FGC) Section 8583 is added to the Code:

This article (16) shall become inoperative upon receipt of notice from the National Oceanic and Atmospheric Administration that it has implemented regulations establishing a permit requirement for a federal drift gill net fishery in the waters of the Exclusive Economic Zone off the west coast of the United States.

An alternative approach would be to wait until federal action has occurred, then pursue “clean-up” legislation to repeal the obsolete sections of state law. CDFW will work with NMFS regulatory staff to develop language that will work best to streamline the state and federal rule processes to minimize confusion for law enforcement and fishermen, and to accommodate needs and timelines identified by the permitting functions of each agency.

One additional option would be to use authority provided to the Department pursuant to existing FGC Section 7652. Section 7652 is intended to provide the state a regulatory mechanism to conform state fishery management programs to federal programs adopted under the Magnuson-Stevens Fishery Conservation and Management Act. Depending on the form federalization takes, this may be an alternative route to consider.

Coordination between NMFS and CDFW will be essential to ensure a seamless transition from state to federal authority, and to determine which of the above options would be most appropriate to eliminate the existing state permit program. Development of the specific regulatory language establishing the new federal requirement, the timing of effectiveness, and the terms of the new federal permit or endorsement (calendar year/fishing year, etc., transfer provisions, effective dates), are examples of items that will require close coordination between agencies.

Latency

During the Council’s June discussion, a request was made for information on fishery participation levels; e.g., the number of ‘active’ permits in recent fishing seasons. CDFW fish ticket and DGN permit holder information indicates that as of September 14, 66 DGN permits have been renewed, with an additional eight that have until the end of the season (March 31, 2017) to renew with substantial late fees. Table 1 shows the number of 2016-17 DGN permit holders who were active for a specified percentage of seasons the permit was held from 1991-92 to 2016-17, broken out by permits renewed for the 2016-17 season (as shown in Figure 2a), permits renewed for the 2015-16 season which have yet to renew (as shown in Figure 2b), original holders of DGN permits which have been transferred in the last three years, and new holders of those transferred permits (as shown Figure 2c). Numbers for >90% - >0% are cumulative; those for 0% are stand alone. A substantial portion of permit holders have been less active since the PLCA was instated (Figure 1).

Table 1. Number of DGN permit holders who were active for a specified percentage of seasons the permit was held from 1991-92 to 2016-17 (refer to Figure 1 below). Un-renewed permits have yet to be renewed for the 2016-17 season.

Data Source: CDFW CFIS and logbook data, extracted September 8, 2016.

Permit Status	Overall, Percentage of Active Seasons					
	>90%	>75%	>50%	>25%	>0%	0%
Renewed	3	11	21	37	52	6
Un-renewed	1	2	2	4	8	0
Transferred (original holders)	0	2	3	5	5	3
Transferred (new holders)	0	0	0	0	0	8

	Pre-PLCA, Percentage of Active Seasons					
	>90%	>75%	>50%	>25%	>0%	0%
Renewed	4	18	35	43	46	12
Un-renewed	0	2	3	5	5	3
Transferred (original holders)	2	3	5	5	5	3
Transferred (new holders)	0	0	0	0	0	8

	Post-PLCA, Percentage of Active Seasons					
	>90%	>75%	>50%	>25%	>0%	0%
Renewed	3	12	19	29	44	14
Un-renewed	1	1	3	3	6	2
Transferred (original holders)	1	2	3	4	4	4
Transferred (new holders)	0	0	0	0	0	8

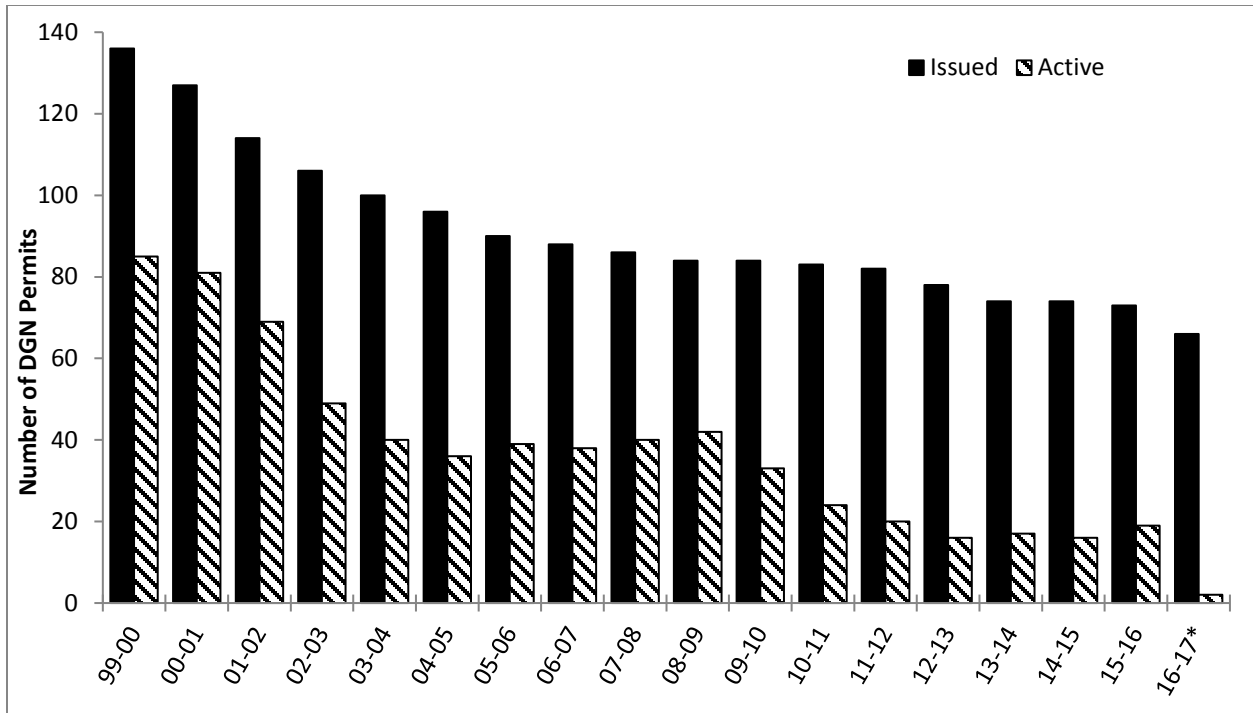


Figure 1. Number of issued and active California DGN permits, 1999-00 to 2016-17* seasons. *2016-17 season is incomplete and data preliminary.

Data Source: CDFW CFIS and logbook data, extracted September 14, 2016.

General Gillnet Permits

Existing statutory language in the FGC requires DGN permit holders and prospective DGN transferees to possess a general gillnet (GGN) permit. In the event of repeal of the state’s DGN permit requirement, the general gillnet statutory language would remain intact, and would continue to require fishermen to possess a GGN permit when making landings into California of fish taken with gillnet gear. Fishermen participating in the federal DGN fishery under a federal DGN permit or endorsement can concurrently comply with the state’s requirement to possess a state GGN permit when landing fish taken with gillnet gear. At this time, CDFW does not foresee any potential conflicts between California’s current GGN permit system and the potential federalization of the DGN permits. CDFW will work with NMFS regulatory staff to address any issues that may arise during the transition from state to federal authority.

Since possession of a state GGN permit will continue to be a requirement for fishing DGN off of California, this requirement will continue to limit the pool of fishermen to which a DGN permit (either state or federalized) can be transferred.

Like the DGN permit, the GGN permit is limited entry. As of September 14, 117 GGN permits have been renewed, with an additional 8 that have until the end of the season to renew with substantial late fees. Unlike the current state DGN permit, GGN permits have a landing requirement in order to be eligible for

transfer, requiring demonstrated landings in 15 of the last 20 years¹. This restrictive participation requirement substantially limits the number of permits available for transfer. Of the 117 current permits, only 29 were eligible for transfer as of the 2015-16 season.

Figures 2a, b and c show the fishing activity of these 74 permits individually, as well as the activity of previous permit holders who transferred their permit within the last three seasons. Activity is defined as a minimum of one landing of swordfish taken by large mesh DGN during a season (April 1st – March 31st of the following year). In all three figures, black cells indicate no DGN permit was held that season by that particular fisherman. Cells of any red shade indicate fishing activity while permitted, grey cells indicate permitted seasons with no fishing activity, and tan cells with a white numeral indicate the number of landings made with DGN gear during a season where a DGN permit was NOT held. There are possible reasons for these records, such as fishing as a crew member under another permit holder. See legend below figure 2c for further descriptions.

Figure 2a visualizes the fishing activity of permit holders who have currently renewed DGN permits for the 2016-17 season and have not received a permit through transfer in the last three seasons. It appears that activity is very unpredictable in most instances. Other factors such as participation in additional fisheries, oceanic conditions, and person decisions affect one's fishing history.

¹ DGN transfer criteria per FGC 8561.5 require permittee to 1) have held permit for 3 years OR permittee is permanently injured or suffers serious illness that results in hardship OR permittee has died, 2) must transfer to a person who holds a valid GGN permit, and 3) pays transfer fee.

GGN transfer criteria per FGC 8681.5 require permittee to 1) have landings for 15 of the last 20 years OR permittee is permanently injured or suffers serious illness that results in hardship OR permittee has died, 2) must transfer to a person who otherwise meets permit requirements, and 3) pays transfer fee.

Figure 2a. Activity of current (2016-17) DGN permits, current and past holders of permits transferred within the last three years, and 2015-16 season permit holders yet to renew this season.

Active Vessels	PLCA																																						
	1	18	15	18	16	20	20*	28	35	32	32	30	26	26	29	33	40	35	46	46	42*	40	41	29	5	3*													
Season:	16-17	15-16	14-15	13-14	12-13	11-12	10-11	09-10	08-09	07-08	06-07	05-06	04-05	03-04	02-03	01-02	00-01	99-00	98-99	97-98	96-97	95-96	94-95	93-94	92-93	91-92													
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Figure 2b. Activity of current and past holders of permits transferred within the last three years.

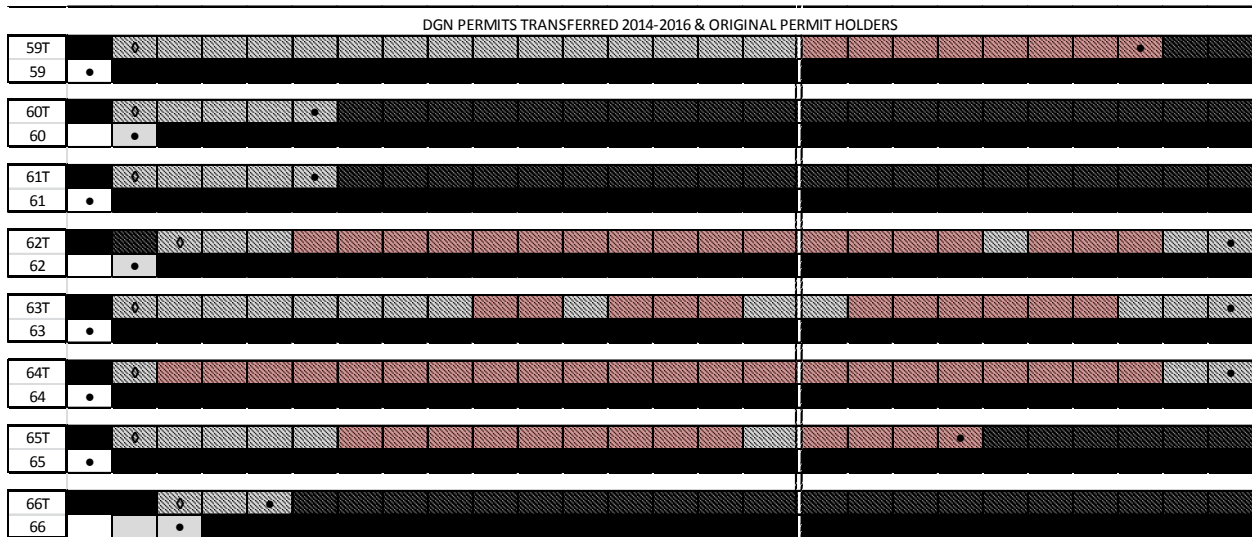
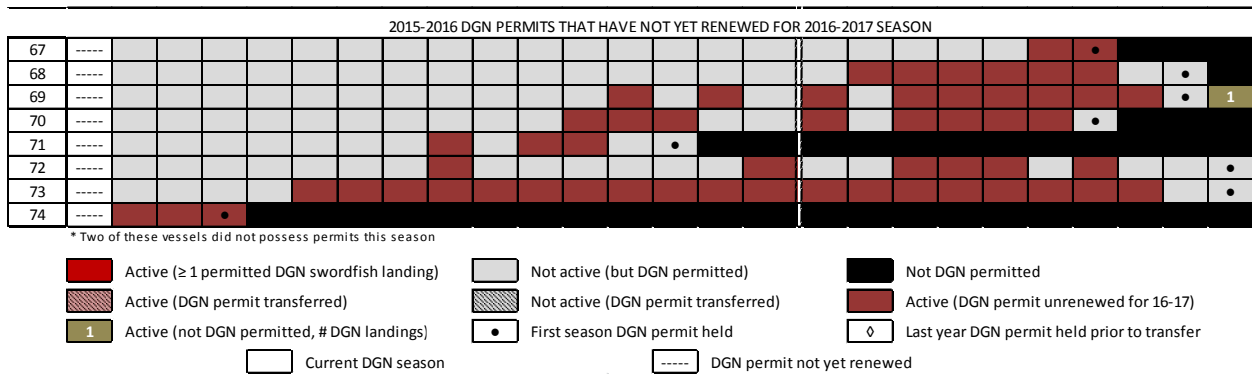


Figure 2c. Activity of 2015-16 season DGN permit holders yet to renew this season.



Recommendations

CDFW recommends that the Council adopt the HMSMT’s proposed purpose and need and proceed with the federalization of DGN permits as described in Alternative 1 of the HMSMT report for [Agenda Item J.5.a](#). CDFW concurs with the analysis and considerations described by the team in the section regarding alternatives considered but rejected.

CDFW views the federalization of DGN permits as a first step in a multi-step process to continue developing the west coast swordfish fishery. At the June meeting, federalization was unanimously supported by those participating in California delegation discussions and in testimony provided to the Council on the floor, and it appears the process can be accomplished quickly and easily if wholesale assumption of the state’s permit program is achieved via NMFS rulemaking. Federalization will allow for the Council to consider DGN fleet size, composition, participation requirements/latency and activity levels, transfer or expiration provisions, and trade-in or other permit endorsement configurations involving other gears in near-term future actions. It will also ensure that ideas surrounding DGN transition and Deep-Set Buoy Gear authorization remain connected in one discussion regarding swordfish permitting until a decision is made whether to decouple DGN management from that of buoy

gear authorization. Many of these concepts have been of interest and the topic of extensive discussion by a wide array of HMS constituencies. However, there has not been consensus on if or how to combine these concepts and implement them through a permitting scheme. Recent discussions and collaborative work by a number of constituent groups talking with each other about what the future west coast swordfish fishery could look like is showing promise that one or more alternatives can achieve broad-based support. As NMFS proceeds with the administrative effort to federalize DGN permits, the Council should recommend scheduling advisory body discussions on these subjects in anticipation of near-future actions that will transition and develop the west coast swordfish fishery. Development and refinement of future permitting alternatives by stakeholders and advisory bodies will be used to inform and shape future Council discussions and recommendations to further development of the West Coast Swordfish Monitoring and Management Plan. CDFW plans to submit a supplemental report under Agenda Item G.6. providing more detailed recommendations on this subject.