

Amendment 5 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species: Federal Drift Gillnet Limited Entry Permit

As discussed in the situation summary some of the changes proposed in Amendment 4 (Agenda Item J.4) overlap with changes that need to be made as part of Amendment 5. These changes are shown both here and as part of the proposed changes under Amendment 4.

Changes are denoted as follows:

- Deleted text
- Added text
- Moved text (original location)
- Moved text (new location)

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1.6.4 Relationship to Existing Fishery Management [Becomes Section 1.6.7 under Amendment 4]

~~As indicated in Section 1.6.6, An aspiration of the Council in adopting this FMP will be to provide a basis for harmonizing management of fisheries by U.S. vessels that fish in both the western and eastern Pacific through engagement with the international entities and agreements described in Section 1.6.1. However, in addition, the FMP can be a mechanism for consolidating federal marine resources management responsibilities under a single set of rules. For example, the drift gillnet fishery is currently subject to controls under California law and regulations and under Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA) regulations. To obtain the complete set of regulations, a fisher would have to go to three sources. Under the FMP, additional regulations would be implemented under Magnuson-Stevens Act authority. It would be reasonable to seek an approach under which at the least, all federal regulations could be found in one place and under a single statutory authority. If the MMPA and ESA regulations were essentially integrated into the FMP process, then this could be accomplished. This would be consistent with the provision of the Magnuson-Stevens Act that a FMP must be consistent with other applicable law. It also would be consistent with the ESA mandate to use all available authorities to further the purposes of that law. Further, by incorporating these regulations into the FMP process, the Council and NMFS would effectively~~
The FMP also can be a mechanism for coordinating HMS management responsibilities stemming from state laws and regulations, the Marine Mammal Protection Act (MMPA), and the Endangered Species Act (ESA). Such coordination could also provide an open and continuing process for considering the possible need for changes in those regulations as conditions change or new information becomes available. Under this approach, fishery participants might find it easier to understand what is required and why.

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2.4 Fixed Elements of the Fishery Management Plan

Fixed elements are the long-standing elements of a fishery management program that direct how it is applied and for what purpose. FMP amendments are required when fixed elements of the FMP are changed, as well as for major or controversial actions outside the scope of the original FMP.

Examples of fixed element actions that would require an FMP amendment include:

- changes to management objectives;
- changes to the species in the management unit (actively managed species);
- changes to the methods for determining MSY, OY and SDC;¹
- amendments to any procedures required by the FMP;
- implementation of limited entry programs. ~~This FMP does not propose a federal limited entry program for any HMS fishery at this time.~~ The Council adopted a control date of March 9, 2000, for commercial and party/charter fisheries for HMS in anticipation that a limited access program may be needed in the near future. Meanwhile, existing state limited entry programs for HMS fisheries will remain in effect when the FMP is implemented; and
- allowing a longline fishery in the EEZ (other than through approved activities under an EFP).

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6.2.1 Drift Gillnet Fishery Management Measures [*Becomes Section 6.6.1 under Amendment 4*]

Background

The drift ~~large-mesh (14" minimum mesh size)~~ gillnet fishery for swordfish and shark ~~(14" minimum mesh size)~~ is managed under numerous complex and detailed federal and state regulations to protect the populations fished as well as the protected species incidentally taken. These regulations ~~are described in Appendixes B and C to the original FMP FEIS (PFMC 2003), the latter being the California code for fishing swordfish and shark with minimum stretched mesh of 14 inches required. Briefly, the regulations (for 14" stretched mesh only) drift gillnets are as follows~~ for large-mesh drift gillnets include:

Federal Regulations

~~Take Reduction Team (POCTRT) measures~~ In addition to protect marine mammals:

- ~~Acoustic deterrent devices (pingers) are~~ state permits, a federal HMS permit is required on drift gillnets to deter entanglement of marine mammals.
 - ~~All drift gillnets must be fished at minimum depth below the surface of 6 fm (10.9 m).~~
 - ~~Skipper workshops may be required.~~
 - ~~Vessels must provide accommodations for observers when assigned.~~
 - ~~Federal Turtle Conservation Closed Areas:~~
 - ~~Drift gillnet fishing may not be conducted:~~
 - ~~In the portion of the EEZ bounded by the coordinates 36°-18.5' N latitude (Point Sur), to 34°27' N latitude, 123°-35' W longitude (off CA); then to 129° W longitude; then north to 45° N latitude (off OR); then east to the point where 45° N latitude meets land (OR), through year 2003 from August 15 to November 15;~~
 - ~~In the portion of the EEZ south of Point Conception, California (34°27' N latitude) and west to 120° W longitude from August 15 to August 31 and again from January 1~~

¹ Numerical estimates of these reference points may be periodically revised, based on the best scientific information, without requiring an FMP amendment. Any such revised determinations, after approval by NMFS, will be published in the annual SAFE report (see Section 4.3).

through January 31 during a forecasted or occurring El Niño, as announced by NMFS².

State Restrictions (applicable to vessels operating from the state's ports)

Participation restrictions:

- ~~The California and Oregon limited entry programs for the swordfish/shark drift gillnet fisheries.~~

Gear restrictions (California):

- ~~The maximum cumulative length of a shark or swordfish gill net(s) on the net reel of a vessel, on the dock of the vessel, and/or in the water at any time shall not exceed 6,000 ft in float line length, except that up to 250 fm of spare net (in separate panels not to exceed 100 fm) may be on board the vessel stowed in lockers, wells, or other storage.~~
- ~~The use of quick disconnect devices to attach net panels is prohibited.~~
- ~~Drift gillnets must be at least 14 inch stretch mesh.~~
- ~~The unattached portion of a net must be marked by a pole with a radar reflector.~~

Mainland area restrictions/closures:

- ~~Drift gillnets cannot be used:~~

~~———— In the EEZ off California from February 1 to April 30.~~

~~———— In the portion of the EEZ off California within 75 nm of the coastline from May 1 to August 14.~~

~~———— In the portion of the EEZ off California within 25 nm of the coastline from Dec. 15 through Jan. 31.~~

~~———— In the portion of the EEZ bounded by a direct line connecting Dana Point; Church Rock on Catalina Island; and Point La Jolla, San Diego County; and the inner boundary of the EEZ from August 15 through September 30 each year.~~

~~———— In the portion of the EEZ within 12 nm from the nearest point on the mainland shore north to the Oregon border from a line extending due west from Point Arguello.~~

~~———— East of a line running from Point Reyes to Noonday Rock to the westernmost point of southeast Farallon Island to Pillar Point.~~

~~———— In the portion of the EEZ within 75 nm of the Oregon shoreline from May 1 through August 14, and within 1000 fm the remainder of the year.~~

~~———— Off Washington (Washington does not authorize this HMS gear).~~

Channel Islands (California) closures:

- ~~Drift gillnets cannot be used:~~

~~———— In the portion of the EEZ within six nm westerly, northerly, and easterly of the shoreline of San Miguel Island between a line extending six nm west magnetically from Point Bennett and a line extending six nm east magnetically from Cardwell Point and within six nm westerly, northerly, and easterly of the~~

² A final rule was published December 16, 2003, at 68 FR 69967, changing 50 CFR § 223.206(d) to prohibit fishing during the months of June, July, and August, which NMFS has concluded offers more protection for loggerheads while having less impact on the fishery than a closure in January and August.

~~shoreline of Santa Rosa Island between a line extending six nm west magnetically from Sandy Point and a line extending six nm east magnetically from Skunk Point, from May 1 through July 31 each year.~~

~~— In the portion of the EEZ within 10 nm westerly, southerly, and easterly of the shoreline of San Miguel Island between a line extending 10 nm west magnetically from Point Bennett and a line extending 10 nm east magnetically from Cardwell Point and within 10 nm westerly, southerly, and easterly of the shoreline of Santa Rosa Island between a line extending 10 nm west magnetically from Sandy Point and a line extending 10 nm east magnetically from Skunk Point from May 1 through July 31 each year.~~

~~— In the portion of the EEZ within a radius of 10 nm of the west end of San Nicolas Island from May 1 through July 31 each year.~~

~~— In the portion of the EEZ within six of the coastline on the northerly and easterly side of San Clemente Island, lying between a line extending six nm west magnetically from the extreme northerly end of San Clemente Island to a line extending six nm east magnetically from Pyramid Head from August 15 through September 30 each year.~~

- ~~• The federal Turtle Conservation Closed Areas are based on recommendation from the identified in the Pacific Offshore Cetacean Take Reduction Team (POCTRT or TRT), which was modified by NMFS after considering fishery observer data and recent satellite telemetry tracking data obtained from two leatherback sea turtles that were tagged in Monterey Bay in September 2000; and on existing state restrictions that regulate drift gillnet gear and regulate drift gillnet use in certain times or places. In an effort to minimize the economic impact of the time and area closures, the above “modified” TRT recommendation was developed to provide access to the productive fishing grounds north of Point Conception, which is consistent with the intent of the TRT proposal, while still providing at least an equal, if not greater, level of protection for leatherback and loggerhead sea turtles. In addition, the modified TRT recommendation does not include the lowering of the net to at least 60 feet as recommended by the TRT because observer data (1990-2000) do not suggest that the lengthening of extenders to 60 ft would result in a definite decrease in leatherback interactions. The original *trigger* language identified by the TRT to extend the area closure in a southerly direction to Point Conception if a leatherback was observed was also removed because NMFS did not consider this extra precaution to be necessary based on the distribution of the turtles. Although the TRT recommended 36°15' N latitude as the southern boundary of the closed area, Point Sur was set as the southern boundary because it is a more recognizable landmark and only three miles north of 36°15' N latitude. The diagonal line from Point Sur to 34° 27' N latitude, 123° 35' W longitude was developed by plotting the satellite tracking data of two leatherback turtles, keeping the southernmost turtle trajectory north of the diagonal line. The reason for this precaution is to protect a potential migratory corridor of leatherbacks departing Monterey Bay for western Pacific nesting beaches. NMFS hopes to learn more about this migratory corridor through additional satellite tag attachments on turtles leaving Monterey Bay, in order to minimize the impact of commercial fisheries on leatherbacks. Plan are required.~~
- ~~• This FMP endorses or adopts in the FMP allA drift gillnet can be no longer than 6,000 ft.~~
- ~~• The gear is prohibited in waters off of Washington. This reflects an existing state of Washington prohibition on the use of drift gillnet gear~~
- ~~• Protected resource area closures include the Pacific Leatherback Conservation Area and the Pacific Loggerhead Conservation Area. The Pacific Loggerhead Conservation Area is effective June, July and August during a forecasted or occurring El Niño event.~~
- ~~• Mainland area closures include a complete closure of the fishery off of California February 1-April 30, within 75 nm May 1-August 14, and within 25 nm December 15-January 31 the following year; and east of a line approximating 1,000 fm off of Oregon~~
- ~~• There are other discrete area closures along the California coast and around the Channel Islands.~~

~~Regulations implemented through this FMP reflect~~ federal conservation and management measures in place under the MMPA and ESA; ~~adopts and~~ all state regulations for swordfish/shark drift gillnet fishing ~~under Magnuson-Stevens authority~~ except limited entry programs (which ~~will remain~~remained under states' authority); ~~modifies an OR closure inside 1000 fm (or way point equivalent) to be in effect year round; closes EEZ waters off WA to all drift gillnet fishers; and continues the current turtle protection closure north of Point Sur, CA to 45° N latitude (August 15 to November 15). During a forecasted or occurring El Niño event (August and January) a specified area south of Pt. Conception to 120° W longitude is closed during June, July and August. The reason for this closure is existing federal and state regulations, including current states' drift gillnet time area closures and gear restrictions (except for an Oregon spring summer closure) were deemed appropriate for adopting intact. However, the~~. In 2004, when the FMP was adopted, ~~the~~ Council concluded it was premature to federalize the states' limited entry programs, with its increase in federal costs and administrative burdens. Existing time/area closures in federal and state regulations were deemed appropriate for adopting intact. Closures off Washington and Oregon are intended to protect the common thresher shark, sea turtles, and marine mammals.

~~The FMP modifies the current state regulations to prohibit, year round, drift gillnet fishing for swordfish and sharks in EEZ waters off OR east of a line approximating the 1,000 fm curve (deleting the May-August prohibition within 75 nm) and prohibits HMS DGN fishing in all EEZ waters off WA. The state of Washington currently does not allow the use of drift gillnet gear and~~ Oregon does not allow drift gillnets to target thresher shark, although DGN vessels have fished off both states and landed their catch in California.

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6.2.5 *Permits [Becomes Section 6.2.1 under Amendment 4]*

Permits are a standard tool used in virtually all fishery management plans to support management by:

- Enhancing or facilitating collection of biological, economic or social data.
- Facilitating enforcement of laws and regulations.
- Identifying those who would be affected by actions to prevent or reduce excess capacity in the fishery.
- Providing information to meet international obligations.

A special kind of permit may be required for limited entry into a fishery. ~~However, no limited entry systems are proposed at this time.~~ Implementation of a limited entry program would require an FMP plan amendment. ~~The Council adopted a control date of March 9, 2000 for commercial and charter fisheries for HMS, in anticipation that a limited access program may be needed in the future.~~

Commercial Permits

This FMP requires a federal permit for all commercial HMS vessels that fish for HMS off of, or land HMS in, the States of California, Oregon, and Washington with a specific endorsement for each gear type (harpoon, drift gillnet, surface hook and line, purse seine, and pelagic longline). ~~Initially, †There will be~~ are no qualification criteria, such as minimum amount of landings, to obtain specific gear endorsements. Any commercial fisher may obtain the required gear endorsements for any authorized gear type. This general HMS permit is endorsed for each specific HMS gear type to be used. The permit is to be issued to a vessel owner for each specific fishing vessel used in commercial HMS fishing. This action is a practical procedure for tracking and controlling, by permits, commercial HMS fishing activities and the effects of regulations on those activities.

For HMS vessels fishing with drift gillnet gear, a federal limited entry drift gillnet (DGN LE) permit is required in addition to a general HMS permit. These federal DGN LE permits are subject to the following conditions:

- DGN LE permits are issued to an individual, and a vessel must be specified on the permit.
- DGN LE permits are issued annually for the fishing year starting April 1 and ending March 31 of the following year.
- Upon publication of NMFS' final rule to establish the federal DGN permit, all California DGN permit holders would be eligible for a federal DGN permit. If a 2017-2018 state permit renewal application is not received by CDFW or postmarked by March 31, 2018, the permit holder will not be eligible to receive a 2018-2019 federal DGN permit.
- Thereafter, the deadline for receipt or postmark of a federal DGN permit renewal application would be April 30 of the fishing year (e.g., April 30, 2019 for the April 1, 2019 - March 31, 2020 fishing year).
- A DGN permit that has expired will not be renewed unless the permit owner requests reissuance by July 31 (three months after the renewal application deadline) and NMFS determines that failure to renew was proximately caused by illness, injury, or death of the permit owner. If the permit expires, it will be forfeited and NMFS will not reissue the permit to anyone.³
- DGN LE permits can be transferred at most once every three fishing years. For the purpose of determining transfer eligibility, the fishing year starts April 1 and ends March 31 of the following year.
- DGN permits may be transferred to another individual only if the current permit holder has held the federal DGN LE permit for a minimum of three consecutive years (counted April 1 to March 31 of the following year). At the time of the establishment of the federal DGN LE permit system, the length of time an individual has held a California drift gillnet limited entry permit carries over (e.g., if an individual has held a California drift gillnet limited entry permit for 2 years, they are eligible to transfer the federal DGN LE permit after 1 year). Exceptions to this limitation on permit transfer may be made under the following circumstances:
 - The permittee suffers from a serious illness or permanent disability that prevents the permittee from earning a livelihood from commercial fishing.
 - If the permittee's heirs or estate submit a transfer request within six months of the permittee's death.
 - Upon dissolution of marriage if the permit is held as community property.
- A permit holder may designate another individual to fish under their permit for up to 15 days per year; the substitute must hold a valid general HMS permit and comply with all other federal permitting requirements.

Regulations implementing the FMP establish the permitting system and set the terms and conditions for issuing a permit. ~~Initially, there will be no qualification criteria, such as minimum amount of landings, to obtain specific gear endorsements. Any commercial fisher may obtain the required gear endorsements.~~ The permits and endorsements are subject to sanctions, including revocation, as provided by Section 308 (g) of the Magnuson-Stevens Act. Permit requirements could be changed in the future under the framework procedures (Section 5.1). This permit program would not eliminate existing state permit or licensing requirements, or federal permits under the High Seas Fishing Compliance Act.

³ These renewal deadlines (April 30 and July 31) for the federal DGN permit differ from the state permit renewal deadlines but are consistent with procedures for other federal permits. Compared to the state DGN permit, the July 31 deadline imposes a shorter renewal window period and does not provide a mechanism to appeal for reinstatement in the event of a failure to renew.

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6.2.6 Reporting Requirements [Becomes Section 6.2.2 under Amendment 4]

The Magnuson-Stevens Act requires that FMPs specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors (See Section 303(a)(5)).

Catch, effort, and catch disposition data are critical for monitoring the fisheries, assessing the status of the stocks and fisheries, and evaluating the effectiveness of management. ~~Data~~Historically, data necessary for management of HMS ~~have~~were not been regularly or fully collected by state, federal ~~and, or~~ international ~~agencies under existing provisions~~organizations. HMS reporting requirements for basic catch-effort and bycatch are inconsistent among the states and ~~the federal government and do not cover all HMS fisheries operations or do not collect all data needed for stock and fishery monitoring~~. The NMFS requires logbooks under the High Seas Fishing Compliance Act for all vessels fishing outside the U.S. EEZ (purse seine, surface hook and line, longline) and the formats of the logs are tailored to the fishery specific needs. ~~But the logbook requirements do not extend to fisheries in the EEZ. Logbooks are required for specific fisheries by non-federal authorities: the IATTC (purse seine, baitboat), California (drift gillnet, harpoon, charter/party), Oregon (developmental gillnet, developmental longline). No other HMS reporting requirements exist in Washington or Oregon (although voluntary logbooks for various HMS fisheries are accepted) may be insufficient for stock and fishery monitoring. Various overlapping reporting requirements may apply to vessels fishing for HMS from the West Coast. Permitting under the High Seas Fishing Compliance Act, states, the IATTC, and the WCPFC all trigger reporting requirements that may vary across different fisheries. A uniform federal requirement for vessels catching HMS in the West Coast EEZ facilitates consistent reporting.~~

~~Current estimates indicate catch, effort and bycatch data are not captured for approximately 72% of the surface hook and line vessels fishing in the U.S. EEZ and an unknown percentage of the charter/party vessels operating from Oregon and Washington ports. In 2000, 28% of the estimated 710 surface hook and line vessels fishing in the EEZ submitted logbooks. Currently 77% of the charter/party vessels coast-wide submit logbooks. The remainder of the HMS fisheries report catch and effort and bycatch data in one format or another to some collecting authority with approximately 100% reporting rate. Not all currently collected data are available to PFMC on a timely basis or in a detailed format making contemporary monitoring of some HMS stocks and fisheries difficult or problematic. Bycatch/incidental catch reporting is not consistent among fisheries and will need revision upon adoption of this FMP. PacFIN does not capture catch and effort data (allowing CPUE to be estimated), which is fundamental for stock assessment and monitoring and needed for preparation of SAFE documents.~~

~~All three states have far offshore fishery regulations that require fishers to declare when they plan to fish on the high seas. These fishers are then allowed to fish outside the EEZ, but cannot fish inside the EEZ during the same trip. All three states have exceptions for albacore troll vessels. The FMP does not propose federal regulations addressing declarations, because the state requirements are adequate.~~

~~This FMP requires all~~All commercial and recreational party or charter/CPFV fishing vessels ~~to~~fishing for HMS ~~must~~ maintain and submit logbooks to NMFS. The original logbook form for each day of the fishing trip must be submitted to either NMFS or the appropriate state management agency. State or existing

federal logbooks ~~could~~can meet this requirement as long as essential data elements are present, and data are available to NMFS subject to a data exchange agreement. ~~Authorizes adjustment of~~⁴ In any case, existing state reporting requirements, including those for landing receipts, would remain in effect. These reporting requirements may be adjusted under the framework process. ~~This action is a practical procedure for (Chapter 5). These requirements facilitate~~ obtaining commercial (including CPFV) catch and effort data ~~for~~and allows for NMFS to develop a standardized ~~NMFS data base~~database on West Coast fisheries.

~~The operator of any commercial fishing vessel and any charter vessel fishing for HMS is required to maintain on board an accurate and complete record of catch, effort and other data on logbook forms provided by NMFS or a state agency. The original logbook form for each day of the fishing trip must be submitted to either the Southwest Regional Administrator of NMFS or the appropriate state management agency. Existing state or federal logbook forms may be used. These include logbooks required by: 1) the Tuna Conventions Act, the FMP for Pelagic Fisheries of the Western Pacific Region, the High Seas Fishing Compliance Act, and any logbook required by California, Oregon or Washington. These logbook forms can be found in the HMS FMP FEIS (PFMC 2003), Appendix D. Information required to be submitted on logbooks may be revised in the future. Existing state reporting requirements, including those for landing receipts, would remain in effect.~~

⁴ Samples of logbook forms at the time the FMP was implemented can be found in the HMS FMP FEIS (PFMC 2003), Appendix D.