



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
1201 NE Lloyd Boulevard, Suite 1100  
PORTLAND, OREGON 97232-1274

Agenda Item H.1.a  
Supplemental NMFS Report 2

June 9, 2017

June 2017

Mr. Herb Pollard, Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, Oregon 97220- 1384

Dear Mr. Pollard:

I am informing you that the National Marine Fisheries Service (NMFS) has made a negative determination on the Pacific Fishery Management Council's (Council) proposed regulations to establish hard caps (i.e. strict limits) on the incidental catch of certain protected species in the California/Oregon large-mesh drift gillnet (DGN) fishery.

In September 2015, the Council recommended that NMFS implement regulations for the DGN fishery that include two-year rolling hard caps on observed mortality and injury to certain protected species during the May 1 to January 31 fishing season. The Council transmitted its proposed regulations for implementing hard caps to NMFS on September 23, 2016. Under the proposed regulations, caps would have been established for five marine mammal species and four sea turtle species. When any of the caps were reached, the fishery would have closed for the rest of the fishing season, and possibly through the following season.

NMFS published a proposed rule to implement the Council's recommendation to establish protected-species hard caps, along with a draft Environmental Assessment (EA), an Initial Regulatory Flexibility Analysis (IRFA), and draft Regulatory Impact Review (RIR) in the Federal Register on October 13, 2016 (81 FR 70660). NMFS accepted public comment on these documents through December 28, 2016. In response to public comment on the proposed regulations and associated documents, NMFS conducted further analysis to consider additional information about the economics of the DGN fishery. The final analysis identified significant adverse economic effects to the DGN fleet that were not identified in the draft analyses to support the proposed regulations.

In its final analysis, NMFS assessed DGN participants' degree of dependence on the DGN fishery versus other fisheries, and the degree to which they could participate in other fisheries during the DGN fishing season to offset economic losses associated with a DGN closure due to a hard cap being met. To gauge dependence on DGN fishing, NMFS analyzed Pacific Fisheries Information Network landings data for the twenty vessels most likely to be impacted by the proposed action. Additionally, NMFS considered the permit holdings of participants in the DGN fishery.



The final analysis shows that given DGN participants' dependency on the fishery, they would experience significant adverse economic impacts that were not identified in the draft EA, IRFA, and draft RIR. A majority of DGN participants rely on the fishery for over half of their annual landings and revenue. As described above, if a hard cap is reached, a closure could either last for the remainder of a single fishing season or extend through the end of the following fishing season. Although DGN participants may be able to offset a portion of their economic losses by engaging in other fisheries, DGN fishermen would need to possess or obtain new permits to participate in other fisheries during typical DGN fishing months. Review of all fishing permits currently held by DGN participants and the seasonal operation of those fisheries indicates that DGN fishermen's ability to offset DGN losses in other fisheries is minimal. Furthermore, fishermen may incur significant costs when purchasing a permit for a new fishery, especially if that permit allows participation in a limited-entry fishery. For example, publicly-sold limited entry California Dungeness crab, California lobster, and groundfish longline permits cost from \$100,000 to over \$200,000 each, depending on vessel size. Additionally, the cost of purchasing fishing gear for a new fishery may also be significant.

Implementing the Council's proposed regulations to establish protected-species hard caps for the DGN fishery would have minor beneficial effects to target and non-target fish species and protected species at the cost of significant adverse economic effects to the participants in the fishery if and when closures would occur. As has been demonstrated in the past, NMFS has successfully managed the DGN fishery's protected species interactions through the ESA Section 7 and MMPA Take Reduction Team (TRT) processes to non-jeopardy levels for ESA-listed species and below potential biological removal for all marine mammal stocks. Based on historic DGN performance, NMFS projected that the proposed regulations would have led to a DGN fishery closure only once in the past 15 years and that the fishery would not be expected to close often in the future if protected species interaction rates remain the same. Nonetheless, implementing hard caps under MSA offers little additional benefit to protected species beyond what has been achieved by implementing regulations based on recommendations developed through ESA Section 7 and MMPA TRT processes.

While the DGN fishery would not be expected to close often under the proposed regulations, the adverse economic effects to DGN participants in the event of any closure would be significant. NMFS' final analyses demonstrate that DGN participants are highly dependent on the fishery for their annual landings and revenue and they have little opportunity to offset economic losses by participating in other fisheries during a DGN closure.

Pursuant to MSA National Standard 7 (i.e., conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication) and given the findings above, implementing protected species hard caps for the DGN fishery under MSA authority is not warranted at this time. Therefore, NMFS has made a negative determination on the Council's proposed regulations and will withdraw the proposed rule which was published in the Federal Register on October 13, 2016.

MSA section 304(b)(1)(B) requires that, if NMFS makes a negative determination on a Fishery Management Council's proposed regulations that the Council be advised of revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment,

the MSA, and other applicable law. The purpose of the Council's recommended hard caps was to conserve non-target species and further reduce bycatch, including incidental take of ESA-listed species and marine mammals, in the DGN fishery below levels currently permitted by applicable law while maintaining or enhancing an economically viable U.S. West Coast-based swordfish fishery. To meet this purpose, the Council could revise its proposed regulations so that any management action would be expected to further reduce the probability of protected species interactions in the DGN fishery, and to do so without significant economic effects such as those that are expected during a fishery closure of one or more fishing seasons. For example, the Council could minimize the adverse economic effects of its proposed regulations by specifying reduced time/area closures, which could be expected to meet the purpose of the proposed regulations.

NMFS encourages the Council to continue participating in the TRT process through its membership on the Pacific Offshore Cetacean Take Reduction Team (POCTRT). The POCTRT was established in 1996 to reduce the incidental mortality and serious injury of marine mammals in the DGN fishery. As demonstrated in the past, the POCTRT has identified management measures which have successfully reduced the likelihood of marine mammal entanglement in the DGN fishery. Like the Council, the POCTRT represents a wide range of stakeholders, including representatives of NMFS, the California Department of Fish and Wildlife, the Pacific States Marine Fisheries Commission, environmental organizations, academic, and scientific organizations, and participants in the DGN fishery. The POCTRT has valuable expertise that could assist in developing measures that would further reduce the probability of marine mammal entanglement in the DGN fishery.

Sincerely,



Barry A. Thom  
Regional Administrator

cc: F/WCR – Rumsey, Wulff, Taylor  
F/SF – Menashes  
F/PIRO – Tosatto  
GC-SW – Feder  
Administrative file – 150414WCR2015SF00212:LE