

**NATIONAL MARINE FISHERIES SERVICE (NMFS) REPORT
ON THE NEGATIVE DETERMINATION ON DRIFT GILLNET (DGN) HARD CAPS
PROPOSED REGULATIONS**

NMFS decided based on updated analyses and best available science not to impose hard caps under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) on the catch of certain protected species by the DGN fishery, as the Council had recommended in September 2015. NMFS provided a letter to the Council further detailing its rationale for making the negative determination and can be found at H.1.a. To access all of the supporting analyses and documentation for NMFS' decision, please see here: <https://www.regulations.gov/docket?D=NOAA-NMFS-2016-0123>

Based on consideration of public comments received, NMFS completed further analysis of the proposed regulations, including a closer look at the potential economic effects. The updated analyses showed that the hard caps would create significant economic hardship for DGN fishery participants, which could lead to significant declines in landings and revenues of U.S. West Coast-caught swordfish, during fishery closure periods when minor beneficial conservation effects of the proposed hard caps regulations were expect to accrue for protected species. Further, the proposed hard caps would have provided little additional benefit to these protected species beyond what has already been achieved under Endangered Species Act and Marine Mammal Protection Act processes. Therefore, NMFS found the proposed regulations to be inconsistent with both the Council's stated purpose for hard caps and MSA National Standard 7; the latter requires that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication, and made a negative determination and decision to withdraw the proposed rule.

Per MSA section 304(b)(1)(B), NMFS must advise the Council 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-recommended hard caps regulation 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 minimize adverse economic effects of its proposed regulations by specifying reduced time/area closures. Additionally, NMFS encourages the Council to continue participating 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 (for more information, see [here](http://www.westcoast.fisheries.noaa.gov/stories/2017/09_06082017_drift_gillnet.html): http://www.westcoast.fisheries.noaa.gov/stories/2017/09_06082017_drift_gillnet.html). Similar to the Council, the POCTRT represents a wide range of stakeholders that possess expertise that could assist in developing measures that would further reduce the probability of marine mammal entanglement in the DGN fishery.

For more information regarding NMFS' decision, see here:
http://www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/hms_DGN_gear.html