



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



Agenda Item H.1.c
Supplemental CDFW Report 2
November 2017

November 7, 2017

Mr. Lyle Enriquez
NMFS West Coast Region
501 W. Ocean Blvd., Suite 4200
Long Beach, CA 90802

Subject: Notice of Availability for Amendment 5 to the Highly Migratory Species Fishery Management Plan and Proposed Rule for Implementation of a Federal Limited Entry Drift Gillnet Permit, NOAA–NMFS–2017–0052

Dear Mr. Enriquez:

The California Department of Fish and Wildlife (Department) has reviewed the National Marine Fisheries Service (NMFS) proposed rules regarding Amendment 5 to the Highly Migratory Species Fishery Management Plan (HMS FMP) and implementation of a limited entry (LE) federal drift gillnet (DGN) permit (NOAA–NMFS–2017–0052, Federal Register, Vol. 82, Nos. 178 and 209). We recommend that a Federal permit not be implemented at this time and offer the following comments.

The notice and proposed rule note that NMFS' intent is to transition the State of California issued LE DGN permit program to federal management under Magnuson-Stevens Fishery Conservation and Management Act authority. The notice and proposed rule both specifically state “[a]fter the LE DGN permit transitions from the State of California to federal management, each participant will need to hold all the same permits and licenses, except that the federal LE DGN permit will take the place of the State of California LE DGN permit.” This statement incorrectly implies that, upon implementation of the federal LE DGN program, the State LE DGN permit will immediately cease to be required.

The State LE DGN permit is required by State law within the California Fish and Game Code (Fish & Game Code, § 8561). The State LE DGN permit will continue to be required until the State Legislature repeals or otherwise changes this requirement. Thus, even after implementation of a federal LE DGN permit, each participant will continue to be required to possess all required State permits and licenses, including the State general gillnet permit and the State LE DGN permit. If NMFS elects to proceed, it should be made clear in both the final amendment notice and the final rules for regulations implementing the federal LE DGN permit that the State LE DGN permit will continue to be required until a change to Fish and Game Code, section 8561 is made by the California state legislature.

NMFS notes that this proposed rule to implement a federal LE DGN permit follows a March 12, 2017 decision of the Pacific Fishery Management Council (Council). While the Council adopted a final preferred alternative to amend the HMS FMP and transition

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the State of California LE DGN permit program from State management to Federal management, the California Department of Fish and Wildlife designee expressed concerns regarding that decision and made a motion to delay decision on the transition. These concerns were also submitted to the Council in a letter from Lieutenant Governor Gavin Newsom (Council Agenda Item J.6.a, Supplemental CA Lt. Governor Report, March 2017, attached).

The proposed rule does not provide a clear need for the Federal permit to be implemented in April 2018. NMFS indicates that “[t]he proposed rule would adopt many of the current State of California management measures associated with the fishery.” The State management measures are still in place and do not require a Federal permit to continue.

The Department remains concerned that transitioning to Federal management will limit the State’s ability to make decisions that affect our natural resources. The State of California remains a co-manager of the DGN fishery, and the Department recommends NMFS not proceed with establishing a Federal LE DGN permit at this time.

Thank you again for your attention to the Department’s concerns. If you have any questions, please contact Mr. John Ugoretz, Marine Region Pelagic Fisheries and Ecosystem Program Manager, at (805) 568-1226 or by email at John.Ugoretz@wildlife.ca.gov.

Sincerely,



Charlton H. Bonham
Director

Attachment

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