

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL  
REPORT ON DRIFT GILLNET FISHERY HARD CAPS UPDATE

The Highly Migratory Species Advisory Subpanel (HMSAS) appreciates the Council's attention to the matter of drift gillnet (DGN) hard caps that are now in effect (March 2020). Litigation challenging the validity of the hard caps rule is ongoing, as is the buyout mandated by SB 1017, along with other pending Federal legislation (S. 906, H.R. 1979). While it makes sense for the Council to defer another look at DGN hard caps until after those are settled, we are concerned about the possibility of a fishery closure under the currently implemented hard cap rule, which could severely compromise the remaining fishermen who are still trying to make a living targeting HMS species using DGN gear.

It is worth noting that since the Council took final action (September 2015), there has **not been an observed take of any hard cap species in the DGN fishery**<sup>1</sup>. Also, in the 2018 List of Fisheries, NMFS reclassified the California thresher shark/swordfish drift gillnet ( $\geq 14$ -inch mesh) fishery from Category I to Category II<sup>2, 3</sup>.

Whether the judge vacates the hard caps rule or not, the HMSAS recommends the Council schedule further discussions on this matter. However remote, it is not outside the realm of possibility that the fishery could be closed for two years based on interactions in the next week. Specifically, we recommend the Council task the HMS Management Team to consult with the HMSAS in addressing the concerns raised in the [National Marine Fisheries Service Report on Drift Gillnet Fishery Hard Caps](#).

For example, and to address the short-term economic hardships noted by National Marine Fisheries Service (NMFS), analysis could consider the following alternative measures:

- Individual (e.g. vessel-based) hard caps and regulatory responses which would not unnecessarily punish fishermen who did not contribute to the attainment of the hard cap.
- Dynamic management of time and area closures that allow for fishing activities in areas where risk of entanglements is low. Fishery participants are currently considering additional electronic monitoring (EM) functionalities which would provide added accountability and justification for shorter and geographically limited closures.
- Utilize existing capabilities in lowering entanglement risk of hard cap species. In addition to the use of EcoCast, NMFS biologists tag/track Pacific Leatherback Sea Turtles, and aerial surveys and other efforts monitoring whale concentrations off the California coast for the Dungeness crab fishery may be useful for anticipating DGN interactions. NMFS (or

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<sup>1</sup> See *California/Oregon Drift Gillnet Fishery Catch Summaries* - <https://www.fisheries.noaa.gov/west-coast/fisheries-observers/west-coast-region-observer-program>

<sup>2</sup> Occasional incidental mortality and serious injury of marine mammals

<sup>3</sup> See <https://www.govinfo.gov/content/pkg/FR-2018-02-07/pdf/2018-02442.pdf> (83 FR 5349, 5359)

other) could establish a warning system using these data shared with the fishermen when turtles are approaching fishing grounds to reduce the risk of incidental interactions.

- Review the purpose and need given the current characteristics of the DGN fleet and effort levels and revisit the 100 percent monitoring option aligned with the hard caps that would incentivize the use of EM.

In conclusion, we request the Council revisit DGN hard caps and monitoring requirements early next year. We share the concerns about economic impacts to many small businesses that may result from a 2-year closure if the current hard caps are triggered and a closure results. Litigation and permit buyout process are both likely to be resolved by March 2021, giving more clarity in the value of developing reasonable options that will improve the balance between economic costs and conservation benefits.

PFMC  
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