

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON DEEP-SET BUOY GEAR PERMIT CLARIFICATIONS

On its January 15, 2021 webinar, the Highly Migratory Species Management Team (HMSMT) discussed the content of the [National Marine Fisheries Service \(NMFS\) report](#) submitted to the Council at the November 2020 meeting, regarding the clarification of terms used during the authorization of deep-set buoy gear (DSBG). The HMSMT additionally met with the Highly Migratory Species Advisory Subpanel (HMSAS) to discuss DSBG permit qualification criteria and hear public comments.

The HMSMT has identified six interrelated items in the NMFS report which need further Council clarification. These are:

- 1) Clarification of who qualifies under permit Tiers 1 and 3
- 2) Standardized definition of DSBG fishing effort
- 3) Tier 3 qualification requirement under new observer coverage levels
- 4) Potential issue of excessive numbers of individuals qualifying under Tier 3
- 5) Council intent in defining limited entry (LE) permit holder as “person”

After discussion, the HMSMT has the following comments regarding these items.

1) Clarification of who qualifies under permit Tiers 1 and 3

The HMSMT struggled in coming to consensus on the definition of “EFP holder,” which is referred to in Tier 1 and Tier 3 of the qualifying criteria. The HMSMT understood that the Council’s intent was to include individuals in Tier 1 and Tier 3 who were authorized to fish under that exempted fishing permit (EFP) and met a tier’s effort criteria.

At the time of initial discussion, the HMSMT only considered those actively engaged in commercial swordfish fishing as potentially qualifying for a LE permit in the future. Qualifying criteria for permit issuance were developed around the idea of documented commercial fishing experience, whether with DSBG, harpoon or drift gillnet gear. It was not considered by the HMSMT that others engaged in the EFP process, such as EFP applicants, EFP managers, etc. who had not run or worked on a fishing vessel under an EFP (i.e., engaged in fishing effort under an EFP) might be included in the pool of individuals that could later receive an LE permit, as they would not have met the tier criteria. Rather, the HMSMT interpreted the Council’s intent as including only those captains running EFP trips since the range of alternatives for qualifying tiers and criteria included options specifying crew members and the Council chose not to include this component in its final preferred alternative.

As the term “EFP holder” used in Tier 1 and Tier 3 does not have a clear definition at this time, members of the public and other groups have voiced concern over the exclusion of certain groups from the tiers. In response to this concern, the Council may wish to reconsider the following groups in relation to defining a qualifying EFP holder:

- a) Crew members not listed as captain on observer data or landing receipts
- b) Individuals who assumed legal responsibility for DSBG fishing effort in which another individual was documented as the operator of the EFP vessel

2) Standardized definition of DSBG fishing effort

Similar to how the Pflieger Institute of Environmental Research EFP defined a “set,” the HMSMT recalls that the Council’s definition of a “set” was “up to 10 pieces of DSBG gear fished for a portion of a day.” For data management purposes, NMFS defines “set” differently: their definition of a “fishing day” is equivalent to the Council’s definition of “set.”

Therefore, the HMSMT suggests that the Council consider adopting the term “fishing day,” defined as “up to 10 pieces of gear actively fished within a calendar day”, in place of “set” as a measure of DSBG fishing effort.

3) Tier 3 qualification requirement under new observer coverage levels

When the HMSMT developed the qualifying criteria, Tiers 1 and 3 were specified as applicable to individuals with “10 observed [fishing days].” There were multiple reasons for this number of observed days. Initially this was in line with observer coverage requirements under the EFPs. Those observer coverage levels were set to collect as much data as possible, provide evidence whether DSBG operators were comfortable in properly using the gear, encourage fishing in a way to minimize risk (both to crew and protected species), and identify individuals who show commitment to fishing DSBG and have a high likelihood of continuing to fish after authorization. Additionally, this level was in alignment with observer coverage requirements for the EFPs at the time of Council adoption. However, due to lack of sufficient funds to maintain this coverage level, NMFS reduced the observer coverage level.

Since Tier 1 had an end date by which individuals could qualify, and that date was prior to the change in observer coverage levels, there is no need to consider modification of this tier.

However, under Tier 3, which has an end date of DSBG authorization, reaching 10 observed fishing days, especially with the number of authorized EFP participants and the limitations of the observer coverage, would be extremely difficult for many individuals. In order to meet the Council’s intentions with setting the tier criteria at 10 observed fishing days, while also recognizing logistical constraints, the Council could consider revising the requirement on Tier 3 to be “10 days of documented fishing effort (via logbooks or observer coverage), with at least 3 of those observed”. This would uphold the requirement for EFP holders to submit their logbooks and indicate an investment to fishing the gear.

4) Potential issue of excessive numbers of individuals qualifying under tier 3

The NMFS report identified the potential issue of an ever-expanding pool of individuals under Tier 3, as it has been NMFS policy to add and remove authorized individuals under an EFP by request. This may result in behavior on the part of EFP holders to add as many individuals as possible under their EFP. The Council may be comfortable with this practice given other elements

of the qualifying criteria that are intended to deter speculative interests, or the Council may wish to make additional recommendations to NMFS for administering EFPs to individuals.

The HMSMT did not express much concern during discussion on this issue, as it was generally felt that as long as NMFS uses discretion when adding authorized individuals (e.g., allowing for one or two additions on an EFP vs. 15 additions), and that those individuals meet the qualifying criteria under Tier 3, there is no reason to attempt to stop or limit this at this time.

5) Council intent in defining LE permit holder as “person”

As specified in the Council motion, a limited entry DSBG permit can be held by a “person” as defined in 50 CFR 660.702, which includes corporations, partnerships, and other entities. The NMFS report indicated that this may be a potential way to circumvent the permit transfer restriction.

It is the HMSMT’s understanding that the Council’s decision was intentional, as it would allow for different individuals to fish under one permit, and a permit would move with the business or corporation should it be passed to family under an estate, while transfer of the permit to another business or individual would remain prohibited.

The HMSAS expressed the opinion that being able to have the permit held by a corporation would be beneficial for liability reasons, and the HMSMT understands this benefit.

PFMC
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