

NATIONAL MARINE FISHERIES SERVICE (NMFS) REPORT ON DEEP-SET BUOY GEAR (DSBG) LIMITED ENTRY (LE) QUALIFYING CRITERIA CLARIFICATIONS

In this report, NMFS provides input for the Council to consider regarding DSBG LE qualifying criteria that the Council adopted as an amendment to the Fishery Management Plan for U.S. West Coast Highly Migratory Species Fisheries (HMS FMP). We identify each element in need of clarification, and outline options in some instances and pose specific questions or proposals in others.

Tiers 1 and 3: Both contain the criteria “*DSBG EFP holders who made at least 10 observed DSBG sets.*” In our report to the Council for the November 2020 meeting ([Agenda Item I.1.a, Supplemental NMFS Report 1](#)), we pointed out some potential issues with interpreting Council intent regarding who would qualify as an EFP holder meeting the effort requirements specified in Tier 1, and also in Tier 3. Because both Tiers require EFP holders to meet an effort requirement, it is important to clarify how NMFS should determine qualifiers based on the combined criteria. Certain interpretations of who qualifies may be more apt to meet the Council’s intent than others.

Because there has been some question as to whether or how the Council may wish to define the DSBG effort requirements (e.g. sets or fishing days and whether “observed” by NMFS-trained observers), we refer to “DSBG effort requirements” more generally. To provide preliminary estimates of potential qualifiers,¹ we considered the number of individuals likely to meet an effort requirement of 10 observed DSBG fishing days by December 31, 2018 for Tier 1 and one observed DSBG fishing day by February 1, 2020 as a proxy for an effort requirement in Tier 3.

Below are a few options for interpreting potential qualifiers in Tier 1 and 3, from most broad to more restrictive.

- A. *Qualifying EFP holders are any individual listed on an EFP for which the associated vessels listed on EFPs met the DSBG effort requirements.* This option would include EFP managers, vessel owners, and vessel operators regardless of whether they were documented as being aboard EFP vessels while the qualifying DSBG effort occurred. With this option, NMFS estimates that approximately 26 individuals are eligible to qualify under Tier 1, and 50 individuals are eligible to qualify under Tier 3. The 50 estimated qualifiers under Tier 3 include the 26 in Tier 1.
- B. *Qualifying EFP holders are the EFP managers, vessel owners, and vessel operators listed on an EFP that were responsible for DSBG fishing activities that meet the effort requirements.* This option would include the vessel operators documented to have met the effort requirements, as well as EFP managers or EFP vessel owners that were responsible for carrying out the terms and conditions of the EFP and submitting reports for fishing

¹ The preliminary estimates of potential qualifiers do not account for EFPs approved by the Council that are currently pending issuance or additional EFPs that may be approved by the Council and issued by NMFS prior to the final rule for this action. The estimates are in part based on an accumulation of “observed DSBG fishing days,” which NMFS interpreted as days fished by an EFP vessel for which a NMFS-trained observer was onboard.

operations that met the effort requirements regardless of whether they were aboard EFP vessels while the qualifying DSBG effort occurred. This option would not include alternate vessel operators that may be listed on the EFP, but did not operate EFP vessels often enough to meet the effort requirements. Operators would need to have been aboard EFP vessels while the qualifying DSBG effort occurred. With this option, NMFS estimates that up to 24 individuals are eligible to qualify under Tier 1, and 45 are eligible to qualify under Tier 3 (including the 24 that would qualify for Tier 1).

- C. *Qualifying EFP holders are vessel owners and operators for DSBG fishing activities that meet the effort requirements.* This option is similar to option B, except that it would not include EFP managers that may have been considered liable for the fishing activities that met the effort requirements. Operators would need to have been aboard EFP vessels while the qualifying DSBG effort occurred. With this option, NMFS estimates that up to 23 individuals are eligible to qualify under Tier 1, and 44 are eligible to qualify under Tier 3 (including the 23 that would qualify for Tier 1).
- D. *Qualifying EFP holders are vessel operators for DSBG fishing activities that meet the effort requirements.* This option would further constrain potential qualifiers by omitting vessel owners that did not meet the effort requirements as vessel operators for those fishing activities. Operators would need to have been aboard EFP vessels while the qualifying DSBG effort occurred. With this option, NMFS estimates that up to 20 individuals are eligible to qualify under Tier 1, and 42 individuals are eligible to qualify under Tier 3 (including the 20 that would qualify for Tier 1).

Tiers 2, 5, 6, and 7: These tiers address drift gillnet (DGN) LE permit holders based on whether they made landings in recent years, and whether they surrendered a DGN LE permit as part of a permit trade-in or buy-back program. Specifically, the respective tiers are described as:

- **Tier 2:** “DGN LE permit holders who made at least one DGN landing between the 2013-2014 and 2017-2018 fishing years and surrender their DGN LE permit as part of a state or federal DGN permit trade-in or buy-back program,”
- **Tier 5:** “DGN LE permit holders who have made at least one DGN landing between the 2013-2014 and 2017-2018 fishing years and did not surrender their DGN LE permit as part of a state or federal DGN permit trade-in or buy-back program.”
- **Tier 6:** “DGN permit holders who have not made a swordfish landing with DGN gear since March 31, 2013, and surrender their DGN LE permit as part of a state or federal DGN LE permit trade-in or buyback program,” and
- **Tier 7:** “DGN LE permit holders who have not made a swordfish landing with DGN gear since March 31, 2013, and did not surrender their DGN LE permit as part of a state or federal DGN permit trade-in or buy-back program.”

- A. For these tiers, NMFS proposes that “DGN permit holders” refers to current federal DGN LE permit holders.
- B. For the purpose of using exact dates where “fishing years” are referenced in Tiers 2 and 5, NMFS proposes using 0801 GMT (0001 local time) on April 1st in the initial year referenced and using 0800 GMT (2400 local time) on March 31st of the terminal year

referenced, consistent with the regulatory definition of an HMS fishing year ([50 CFR 660.702](#)).

- C. Tiers 2 and 6 reference surrender of a federal DGN LE permit as part of a permit trade-in or buy-back program. Currently no provisions exist in federal regulations either for surrendering a federal DGN LE permit or for a permit trade-in or buy-back program.
 - a. At present, the only way for a permit holder to effectively surrender their federal DGN permit is to allow it to expire and not renew it, such that it becomes forfeited. However, there are timing stipulations involved in this process of forfeiture that could conflict with an applicant's ability to “surrender” their permit in time to qualify for a DSBG permit (e.g., passing of a renewal period). For these reasons, ***NMFS suggests the Council recommend developing a mechanism to surrender a federal DGN LE permit as part of applying for a DSBG LE permit under these tiers.***
 - b. Further, these tiers require surrendering a federal DGN LE permit as part of a state or federal trade-in or buy-back program. Because there are no provisions for a federal permit trade-in or buy-back program in federal regulations, there is no way to account for this type of transaction in regulations for this proposed action unless and until regulations are developed for a federal permit trade-in or buy-back program and incorporated into those implementing this action. Regarding participation in a state trade-in or buy-back program, ***NMFS requests that the Council clarify when a federal DGN LE permit holder would be considered to have completed the State of California’s DGN transition program.*** Consistent with the one-time application period for Tiers 1-7 proposed in Agenda Item H.4, Supplemental NMFS Report 1, an applicant’s eligibility should be possible to be determined at the time of the final rule amending the HMS FMP to authorize DSBG.

Tier 4: *“Individuals who possessed a California Swordfish Permit in the 2018-2019 fishing year and made at least one swordfish landing using harpoon gear between the 2013-2014 and 2017-2018 fishing years.”* NMFS proposes that “2018-2019” means April 1, 2018-March 31, 2019, and “between the 2013-2014 and 2017-2018 fishing years” means beginning 0800 GMT on April 1, 2013 and ending at 0800 GMT on March 31, 2018 (2400 local time).

Tier 8: *“Any individual with a documented commercial swordfish landing. The basis for documenting a commercial swordfish landing attributable to the applicant will be specified in Federal regulations.”*

- A. ***NMFS requests the Council clarify whether “individual” should be interpreted as the vessel operator, whose state license number is reported on the state fish ticket, or the vessel owner whose vessel made the landing, or both.***
- B. For the purpose of attributing swordfish landings to applicants under Tier 8, NMFS proposes that the Council set a date range that begins at 2004, when the HMS FMP was implemented. Doing so would provide applicants with a clearer definition of the qualifying criteria for this tier. Older landings and permit data is likely to be associated with expired contact information. Without up-to-date contact information, NMFS would not be able to provide adequate notice to eligible individuals.

Ranking within Tiers: The Council has specified that NMFS use “*total swordfish landings from the applicable gear type*” to rank individuals within a tier, and that applications that do not qualify for Tiers 1-8 (non-tier applications) be ranked on a “*first-come, first-served*” basis. Tiers 6 and 7 specifically consider applicants that have not made any recent swordfish landings with DGN gear. Taking this guidance with the Council’s direction to use total landings, NMFS proposes to rank applicants within Tiers 6 and 7 based on their total swordfish landings using DGN gear between April 1, 2004 and March 31, 2013.