

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON DEEP-SET BUOY GEAR PERMIT CLARIFICATIONS

The Highly Migratory Species Advisory Subpanel (HMSAS) reviewed the briefing materials for this agenda item, including the two Supplemental National Marine Fisheries Service (NMFS) Reports, and has the following recommendations for clarifying and/or modifying the deep-set buoy gear (DSBG) limited entry (LE) permitting process.

The HMSAS has considered all the permitting options provided in the current process. We would like to begin by highlighting the basic unfairness of this process to currently active participants in the swordfish industry. DSBG was portrayed as a way of transitioning drift gillnet (DGN) fishery participants to a lower bycatch gear. But the tier system seems to make it more difficult for DGN participants to transition to DSBG.

Acknowledging the aforementioned concern, we offer the following suggestions to address the unfairness or further clarify aspects of the permitting process or permit allocation:

Issuance of LE permits to DSBG Exempted Fishing Permit (EFP) holders (Tiers 1 and 3)

[Supplemental NMFS Report 2](#) describes four options for clarifying which individuals whose names appear on EFPs would qualify for an LE permit.

The HMSAS recommends the Council choose Option B, where qualifying EFP holders are defined as the EFP managers, vessel owners, and vessel operators listed on an EFP that were responsible for DSBG fishing activities that meet the effort requirements.

Issuance of LE permits to drift DGN permit holders (Tiers 2, 5, 6, 7)

The HMSAS believes that there is a terrible injustice in the tier system that penalizes the DGN fisherman who have not taken the state buy-out. Choosing to keep fishing and make a living versus taking the buyout could delay their opportunity to obtain a DSBG permit by three or four years and maybe forever. We suggest all DGN permit holders who have made a landing between April 1, 2013 and March 31, 2018 be bundled together in Tier 2, thus giving all active DGN permittees a better chance to obtain a DSBG permit, if desired. This would involve eliminating the permit surrender provision in Tier 2 and eliminating Tiers 5 and 7 (which also require DGN permit surrender).

We wish to highlight for the Council that the proposed Federal legislation (H.R. 404) that will end the DGN fishery via a “transition program,” fails to provide a clear path that would prioritize DGN fishermen for the transition to DSBG. Failure to do so leaves DGN fishermen to fend for themselves or cling to the hope that an unknown number of potential permittees choose not to apply for the permit.

To address the concerns just mentioned, the HMSAS has revised permit tiers as follows:

- Tier 1: DSBG EFP holders who made at least 10 observed DSBG sets [fishing days] by December 31, 2018.
- Tier 2: Individuals who have held a DGN LE permit and made at least one DGN landing between the April 1, 2013 and March 31, 2018. (This effectively includes qualifiers under current Tier 5.)
- Tier 3: DSBG EFP holders who have made at least 3 observed DSBG sets [fishing days] by the effective date of the Final Rule authorizing DSBG.¹
- 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.
- Tier 5: Individuals who have held a DGN LE permit but have not made a swordfish landing with DGN gear since March 31, 2013 but made at least one DGN landing between April 1, 2004 and March 31, 2013. (This would effectively include qualifiers under current Tiers 6 and 7.)
- Tier 6: Any individual with commercial swordfish fishing experience as outlined in Agenda Item H.4.a, Supplemental CDFW Report 1. The basis for documenting a commercial swordfish landing attributable to the applicant will be specified in Federal regulations. (Was Tier 8.)

Ranking within tiers

The HMSAS recommends that instead of using total swordfish landings from the applicable gear type as the basis for ranking applicants within tiers, fishing effort (i.e., trips) should be used for this ranking. This would be measured by counting the number of individual fish tickets with at least 1 lb. of swordfish attributed to the applicant and the number of years the applicant possessed any swordfish related permit. Fishing effort would better reflect historical participation in the relevant fisheries under this approach.

Definition of person for the purposes of holding an LE permit

The Council proposed using the regulatory definition of person at 50 CFR 660.702, which includes “corporation, partnership, association or other entity” in addition to individuals. The HMSAS supports retaining this definition, because it offers a variety of business advantages, including limitation of liability, etc. The Council should advise NMFS to collect the necessary ownership interest data to prohibit permit transfers through joint ownership per the Council recommendation.

Permit transfer in special circumstances

NMFS Report 1 identifies various circumstances in relation to the prohibition of permit transfers. For an individual that includes death, divorce, or bankruptcy. The HMSAS recommends only allowing a one-time transfer to an immediate family member in the event the permit holder dies. In all other circumstances, for individual permit ownership, the permit reverts to the pool of available permits.

¹ As discussed below, the HMSAS recommends reducing the Tier 3 observer coverage requirement from 10 to 3 fishing days consistent with the reduced observer coverage level beginning in 2020.

Permit qualification process

Subject to the above, the HMSAS is comfortable with a single qualification period that encompasses Tiers 1-8. (The current tiers are discussed in our Statement, but the same principal would apply if the recommended revised tiers were adopted.)

DSBG EFP Observer Coverage

The HMSAS supports the Council clarifying that an “observed” set (i.e., fishing day) could be conducted by either a NMFS observer and/or a NMFS technical monitor.

DSBG Tier 3 observed days

Beginning in 2020, the observer program reduced its minimum observer coverage rate from the first 10 fishing days made by an EFP vessel and 30 percent of fishing days thereafter to the first three fishing days and 10 percent thereafter. The HMSAS recommends changing the qualification criteria for Tier 3 from 10 observed fishing days to “10 days of documented fishing effort (via logbooks or observer coverage), with at least 3 of those observed”, consistent with the change in NMFS practice and the recommendation by the HMS Management Team. If this is insufficient, the Council could recommend requiring some number of additional unobserved fishing days as documented in logbooks.

Additional Considerations

The HMSAS would like to flag the recent entanglement of a sperm whale by monofilament line and recommends the Council obtain further information to determine whether it was or could have been DSBG gear. If the interaction is determined to be associated with DSBG, impacts should be evaluated as part of the ongoing environmental impact statement and Endangered Species Act consultation associated with gear authorization.

PFMC
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