

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON DRIFT GILLNET HARDCAPS

The Highly Migratory Species Management Team (HMSMT) met on May 13th, 2021, to discuss potential revisions to the Purpose and Need for hard caps for the large-mesh drift gillnet (DGN) fishery and approaches to modify hard caps to develop a range of alternatives for Council consideration. After re-hashing some of the history of Council and advisory body discussions regarding the Council's 2015 recommendations for hard caps, subsequent rules, and litigation, the HMSMT discussed the current state of the DGN fishery, including the status of the state of California's SB 1017 DGN transition program, proposed Federal legislation for a gear transition program, and further reduction in participation in the DGN fishery. Ultimately, with the proposed Federal legislation yet to become law, and uncertainty due to litigation regarding the California DGN permit, the HMSMT was reluctant to conclude that recent reductions in participation in the DGN fishery would be likely to persist into future years.

Purpose and Need

After considering issues raised in the National Marine Fisheries Service (NMFS) Report during the November 2020 meeting ([Agenda Item I.4.a, Supplemental NMFS Report](#)), the HMSMT revisited the Purpose and Need identified for the 2015 hard caps action.¹ The HMSMT discussed concerns about the potential adverse costs of the prior regulations to a substantial number of participants in the fishery being counter to the objective of an economically viable west coast-based swordfish fishery. In consideration of a meaningful conservation objective on balance with likely costs of additional regulation under a hard caps management regime, the HMSMT considered whether aiming to reduce bycatch in the DGN fishery is problematic given the rare-event nature of the fishery's interactions with hard caps species. The HMSMT noted comments from Council members and the public in more recent years regarding the importance of hard caps regulations for incentivizing fishing behavior. The HMSMT also acknowledged goals for the west coast-based swordfish fishery set out in the draft Swordfish Management and Monitoring Plan (SMMP) and the more recent progress made towards actions therein, e.g., exploratory gear trials under exempted fishing permits and the Council's recommendation to authorize deep-set buoy gear (DSBG). When the Council made its recommendation for hard caps in 2015, the draft of the SMMP was in its infancy and participation in and production by the west coast-based swordfish fishery was contingent upon that of the DGN fishery. Keeping in mind the goals of the [2018 draft of the SMMP](#) and progress made since, the HMSMT recommends that the Council revise its Purpose and Need for exploring hard caps for the drift gillnet fleet as follows:

¹ The original purpose was "to conserve non-target species and further reduce bycatch, including incidental take of ESA-listed species and marine mammals, in the DGN fishery below levels currently permitted by applicable law while maintaining or enhancing an economically viable west-coast-based swordfish fishery." The need was "to better integrate fishery management under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) with enhanced protection of ESA-listed species and other marine mammals, and to address National Standard 9 and Section 303 of the MSA to minimize bycatch and bycatch mortality and conserve non-target species to the extent practicable."

*The **purpose** is to incentivize fishing practices and tools in an effort to minimize bycatch and bycatch mortality and conserve non-target species in the drift gillnet fishery to the extent practicable to address National Standard 9 and Section 303 of the MSA. The **need** is to ensure that incidental take and bycatch of non-target species in the DGN fishery does not become excessive or constraining to the economic viability of the West Coast-based swordfish fishery.*

This purpose is reflective of the Council’s 2015 recommendation for hard caps and a key goal highlighted for the broader swordfish fishery in the Council’s draft SMMP. The HMSMT recommends striking language concerning further reductions in bycatch below levels currently permitted by applicable law because achieving that purpose (1) proved difficult to forecast given the rare-event nature of interactions with hard caps species in the DGN fishery and (2) perhaps led to the stringent management response estimated to impose significant adverse costs for the fleet. The HMSMT also removed from the original purpose, but added to the revised need, the Council’s goal for an economically viable West-Coast based swordfish fishery. In the Council’s draft SMMP, this goal for the fishery is further described as an ability “to meet demand for a fresh, high quality, locally-caught product and reduce reliance on imported seafood.” Additionally, the Council’s draft SMMP includes the goal of “promot[ing] and support[ing] a wide range of harvest strategies for swordfish off the West Coast.” To achieve these goals, it will be important to promote continuous operations in the fishery. Therefore, the Council “needs” tools to manage incidental take and bycatch among individual fleets to avoid excessive interactions that could otherwise constrain operations of the fishery as a whole.

Approaches to Revising Hard Cap Alternatives

Before settling on suggested approaches, the HMSMT reviewed the Council’s previous hard caps action, the alternatives, and impact analyses. To summarize, the Council’s final action included rolling 2-year hard caps of observed interactions for the list of species. If the 2-year average exceeded the cap limit, the DGN fishery was expected to close for the remainder of that two-year period.

The HMSMT discussed several approaches to either modifying hard caps or the management action that would result from a cap being reached, to attempt to balance the Council’s management interests and reduce potential negative economic impacts of hard cap regulations on fishery participants. We characterize the approaches as three main categories, with potential options under each: 1) Defining different hard cap numbers, 2) Adjusting the management response, and 3) Adjusting the administration of the caps. The three main categories are not mutually exclusive; thus, the Council could recommend combining options among them. Below, the HMSMT provides general parameters to these approaches and includes some examples for each.

- 1) Revisit Hard Cap Numbers: Revising hard cap numbers to balance the objective of minimizing protected species take in the DGN fishery with promoting economic viability in the swordfish fishery through a range of harvest strategies. Slight adjustments to the cap number may decrease the likelihood of a fishery closure while still ensuring bycatch levels are capped below species’ biological needs, and yet still incentivize responsible fishing behavior, such as:
 - i. Change loggerhead turtle from 2 interactions to 3
 - ii. Characterize caps as only pertaining to serious injuries/mortalities rather than to all interactions

- 2) Adjust the management response: Changes to the temporal extent of the fishery closure or define a lesser spatial and/or temporal extent for a closure, should a cap be met or exceeded.
 - i. Reduce full closure period (e.g., remainder of current season, 1, 2, etc. months)
 - ii. Extend closure of the Pacific Leatherback Conservation Area from November 15 to January 31
 - iii. Specify species-dependent management responses: The severity of a management response and/or spatial/temporal range of closure varies by hard cap species (e.g., extend Pacific Leatherback Conservation Area closure if leatherback turtle interaction, close deep waters or increase observer coverage if there is a sperm whale interaction, extend Southern California Loggerhead Closure Area if there is a loggerhead turtle interaction, etc.)

- 3) Adjust how current caps are administered
 - i. Individual hard caps only (closure results when total cap is hit or exceeded)
 - ii. Individual hard caps (individual cannot fish remainder of season if single interaction) and fleet hard cap (entire fishery closes when cumulative individual interactions exceed fishery hard cap)
 - iii. Fleet hard cap only (status quo: full fishery closes when a hard cap is hit or exceeded)

In a supplemental report, the HMSMT anticipates providing additional discussion, including pros and cons, for these approaches, and may outline other options for Council consideration to move forward with DGN hard caps.

PFMC
06/02/21