

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

Earlier this year, the United States District Court (Court) for the District of Columbia cast its line in favor of California’s drift gillnet (DGN) fishermen. In so doing, the Court vacated the Hard Caps Rule due to conflicts with National Standard 7. As a result, the Pacific Fishery Management Council (Council) is now considering adopting a Revised Proposed Action, Purpose and Need Statement, and Range of Alternatives, as appropriate. Against that backdrop, the Highly Migratory Species Advisory Subpanel (HMSAS) offers the following comments.

### **Background**

For the benefit of Pacific Fishery Management Council (Council) members, and others, who were not involved when this came before you in 2015, we offer the following brief summary of past events. At the time, the [HMSAS recommended](#) the No Action Alternative; but if hard caps were going to be applied, they be limited to Endangered Species Act (ESA)-listed sea turtles. The reason for limiting hard caps to sea turtles is because marine mammal bycatch is addressed by the Pacific Ocean Cetacean Take Reduction Team (POCTRT) process while there is no comparable process for sea turtles. The procedural history of the hard cap rulemaking is outlined in [Agenda Item F.5, Attachment 1](#) (the Memorandum Opinion on Gary Burke, et al. v. Wynn Coggins as acting Secretary, U.S. Department of Commerce) on pages 3 – 7. In summary, the Court’s ruling and rationale for its decision sided with Gary Burke, et al. based on the action’s inconsistency with Magnuson-Stevens Act National Standard 7.

### **Revised Proposed Action**

Given the information provided under previous Agenda Items: F.1 – no observer bias; and F.4 – Performance metrics; it is unclear to us why hard caps are necessary from a biological perspective. The paper submitted as [Agenda item F1.a, Supplemental NMFS Report 2](#) (*Observing unobserved fishing characteristics in the drift gillnet fishery for swordfish*), on page 17, includes the following quote:

“...we observed little statistical evidence of differences between observed and unobserved trips, neither for vessels that periodically carried observers nor for vessels that were never observed.”

The materials provided under Agenda Item F.4, Drift Gillnet Fishery Bycatch Performance Report, shows the fishery is performing well in terms of bycatch minimization, lower bycatch mortality, and conservation of non-target species<sup>1</sup>.

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<sup>1</sup> We remind you of the information contained in the [Agenda Item F.4.a, Supplemental NMFS Report 1](#) – during the 2019/20 fishing season (the most recent year for which data is available) “74 percent of the observed catch was kept, and that 80 percent of the returned catch was released alive. Most of the species observed caught were marketable; 19 percent of the observed catch consisted of species that are not marketed. Of non-marketable species caught during the 2019/2020 season, 72 percent were released alive.”

We are also mindful of the demands being placed on Council time and resources and believe your time would be better spent on more pressing issues. As such, we recommend the Council not take up hard caps. We address the other items enumerated in the Situation Summary should the Council deem moving forward with hard caps as appropriate.

### **Revised Purpose and Need**

Although the Highly Migratory Species Management Team (HMSMT) has proposed revisions to the Purpose and Need statement in their [Report 1](#), the HMSAS does not see any compelling purpose and need for this action. While the HMSMT's proposed revised purpose is to "incentivize fishing practices and tools in an effort to minimize bycatch and bycatch mortality and conserve non-target species" we believe the best way to incentivize someone is to reward them for doing what you want them to do. In reality, the proposed purpose is punitive in nature and will penalize someone, or the fleet, for interactions that are rare and unforeseeable. How do you incentivize someone to fish more carefully when the practice you are trying to correct happens so rarely? Thus, we are unsure if the threat of closure, or other punitive action, will incentivize anything. DGN fishermen already have a strong incentive to avoid interactions with large marine mammals, because it is economically devastating, given the loss of DGN fishing gear can cost as much as \$80,000; and that does not include the loss of fishing time. These increased expenses other associated costs necessitate careful and deliberate planning. More fundamentally, fishermen have no desire to harm protected marine life.

### **Range of Alternatives**

We view this as the scoping meeting for this issue. If the Council decides to move forward with further conversations on hard caps, we recommend the Council limit its action to adopting a Purpose and Need for public review at this meeting; and to schedule discussion(s) on the range of alternatives for a future meeting.

### **Conclusion**

The DGN fishery has taken great strides to avoid, limit, and reduce bycatch. Acoustic pingers have resulted in near elimination of interactions with large cetaceans – at a time when marine mammal populations continue to expand. Net extenders, time and area closures, etc. have reduced interactions with sea turtles to virtually none. Yes, interactions with some marine mammal populations continue; but none of these at levels which are concerning from a population level standpoint. This fishery should be applauded and promoted for all that it has done; but for some it is not enough. There is continued lobbying for the elimination of the fishery while touting the harpoon and deep-set buoy gear fisheries. It is beyond dispute that neither of these fisheries can meet demand nor are they truly financially viable. Some seem to confuse making a small profit on a specific trip with long-term economic success of a business and one's family. Additionally, while we are unaware of any studies on the subject, we think it is very likely that the carbon footprint of those fisheries (measured in terms of gallons of fuel burned per pound of fish landed) is significantly greater than the DGN fishery.

We believe any action should be based on sound science, including biology and economics, not politics. Here, an action without an identified conservation or economic benefit stands to destroy a fishery; harm fishermen (and their families); make the U.S. more reliant on seafood harvested by nations with much less concern for whales, sea turtles, and other species of concern; and result in higher contributions to climate change causing greenhouse gas emissions. We ask that you prioritize science and support well-managed U.S. fisheries and their dependent fishing communities by not proceeding with this action.

PFMC  
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