



## Pacific Fishery Management Council

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7700 NE Ambassador Place, Suite 101 Portland, OR 97220-1384  
Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | [www.pcouncil.org](http://www.pcouncil.org)  
Marc Gorelnik, Chair | Merrick J. Burden, Executive Director

December 21, 2022

Dr. Scott Rumsey, Ph.D.  
Acting Regional Administrator  
National Marine Fisheries Service, West Coast Region  
1201 NE Lloyd Blvd #1100  
Portland, OR 97232

Dear Dr. Rumsey:

With this letter I am transmitting Amendment 6 to the Fishery Management Plan (FMP) for West Coast Fisheries for Highly Migratory Species (HMS) (Attachment 1) for Secretarial review as described in Section 304(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). I have also reviewed the proposed regulations to implement provisions of Amendment 6 (Attachment 2) and deem them necessary and appropriate for the purposes of implementing the plan amendment as prescribed by Section 303(c) of the MSA.

Amendment 6 adds provisions to the HMS FMP authorizing deep-set buoy gear (DSBG) as legal commercial fishing gear in Federal waters of the West Coast Exclusive Economic Zone off California and Oregon. It also establishes a limited access permit program for vessels fishing in Federal waters south of Point Conception and east of 120° 28' 18" W. longitude. Individuals would be allowed to use the gear to commercially fish outside of this area when possessing a DSBG endorsed General HMS Permit (50 CFR 660.707(a-e)).

DSBG is intended to target swordfish with very low levels of bycatch. Beginning in 2010, the Pflieger Institute of Environmental Research (PIER) began design and testing of DSBG in Federal waters off Southern California. The design was inspired by gear used off the east coast of Florida, but both the gear and deployment method were modified to suit conditions on the West Coast. PIER first presented preliminary results to the Pacific Fishery Management Council (Council) in March 2012 after the first year of research trials. In March 2015 PIER submitted an exempted fishing permit (EFP) application for review by the Council. While fishing under the PIER EFP continued, the Council began actively soliciting EFP applications to expand the number of vessels testing the gear. The Council has reviewed and made recommendations on over 100 EFP applications to test DSBG and related gear configurations and National Marine Fisheries Service (NMFS) has issued permits to more than 50 vessels. At least 33 vessels have made landings with the gear.

The Council recommended 100 percent observer coverage for DSBG EFPs. After an initial period of testing, NMFS scaled back observer coverage to less than 100 percent for vessels that completed initial trips with 100 percent coverage. Along with mandatory logbooks, observer reports have

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provided substantial data to evaluate the impact of this gear type on the human environment. The data demonstrates that bycatch has remained low with more than 90 percent of the catch comprising swordfish. Much of the remaining incidental catch consists of marketable species. The design and deployment of the gear also means that bycatch mortality is very low. Its low environmental impact is also reflected in the few instances of protected species interactions.

Informed by the initial research and subsequent testing under EFPs, the Council scoped measures necessary to manage a fishery using this gear type beginning in March 2016. Over numerous meetings the Council developed a range of alternatives to evaluate potential management measures including a limited access/entry permit for vessels fishing in the Southern California Bight. To date all fishing under EFPs has occurred in this region and potential fishery participants expressed concerns about crowding and gear conflicts occurring if too many vessels fished in close proximity in this area. The Council views license limitation as a control on the development of the fishery through mechanisms to periodically issue permits while monitoring fishery performance. When developing the features of this limited entry permit program, the Council took into account the factors enumerated in Section 303(b)(6) of the MSA. Council consideration of these factors was based on an analysis prepared by its Highly Migratory Species Management Team (Attachment 3).

The Council adopted a range of alternatives and identified its preliminary preferred alternative in November 2018 and took final action in September 2019 by adopting its final preferred alternative and related FMP amendment language. NMFS prepared a Preliminary Draft Environmental Impact Statement to support Council final action.

In March 2021, NMFS reported back to the Council on its review of the proposal and identified several issues with the limited entry permit program that needed clarification. In response, the Council:

- Confirmed that a DSBG limited entry permit may be held by a person as defined at 50 CFR 660.702, which includes corporations, partnerships, or other entities, but in all cases permit transfers are prohibited except for a one-time transfer to a family member upon the death of an individual permit holder. In cases where an entity holds a permit, transfers by means of changes in the ownership of the entity will be prohibited.
- Clarified that for the purpose of limited access permit qualification, “EFP holder” means vessel operators on board when DSBG was used or individuals identified as having managed the EFP including owners of vessels to which the EFP was assigned.
- Supported the NMFS recommendation for a single permit qualification period.
- Adopted a revised set of criteria for permit qualification Tier 8 covering individuals with documented commercial swordfish fishing experience.
- Specified that ranking within tiers would be based on total swordfish landings for Tiers 1-5 and on a first come, first served basis for the remaining tiers.

The attached proposed FMP amendment language was initially adopted by the Council in September 2019 and incorporates additional changes based on the record of the Council’s March 2021 meeting. Amendment 6 also includes language addressing standardized bycatch reporting methodology requirements specific to DSBG. (HMS FMP Amendment 7 makes other changes relevant to these requirements. Amendment 7 was approved on July 5, 2022, 87 FR 40744.)

The FMP amendment and pursuant regulations would authorize two DSBG gear configurations, which have been tested through EFPs. So-called standard DSBG consists of independently deployed pieces of gear. Each piece consists of a set of floats at the surface that allows fish strikes on the gear to be detected, a weighted vertical line that puts up to three hooks below surface waters where sea turtles and marine mammals typically occur, or at least 90 m. (50 fathoms, 295 feet) below the surface. The terms of the EFPs allow no more than 10 pieces of gear to be deployed at any one time and the gear must be monitored during deployment. Strike detection leading to fast gear retrieval, deployment at depth, and active monitoring contribute to low bycatch with this gear. PIER subsequently developed a linked buoy gear configuration intended for larger vessels and greater production. Each piece of linked gear consists of two buoy and vertical line sets joined by a horizontal line at depth with three hooks attached to it by branch lines. Each of these gear pieces is joined by a horizontal line at least 11 m. (36 feet) below the surface. As with the standard configuration, no more than 10 pieces may be deployed at any time and the gear must be actively monitored.

In addition to the aforementioned permitting and gear description elements, the Council proposal specifies various limits on gear deployment integral to the low bycatch performance of this gear type. These measures are described in the Environmental Impact Statement evaluating this action. These measures include requirements to set the gear during daylight and retrieve it within three hours of local sunset and active monitoring of the gear by the vessel staying within reasonable proximity of the gear. Fishers also would be permitted to simultaneously deploy other commercial fishing gear as long as DSBG can be actively monitored. The proposed FMP amendment language does not specify the measures to implement these provisions. Instead, consistent with the framework adjustment procedures authorized by the FMP, management measures are specified in regulation and may be adjusted through the biennial management process described in the FMP. As noted above, I have reviewed the draft regulations and find them consistent with the provisions of the Council proposal.

Over the course of more than four years, from PIER's initial submission of an EFP application to final action in September 2019, the Council and its advisory bodies have worked diligently to develop a management program around DSBG to put into the hands of West Coast fishers a new, innovative, and low bycatch gear for targeting the abundant swordfish resource found in West Coast waters. We eagerly await the approval of Amendment 6 and implementing regulations to fulfill this promise.

Sincerely,



Merrick J. Burden  
Executive Director

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Attachments

Attachment 1: Fishery Management Plan for West Coast Fisheries for Highly Migratory Species Proposed Amendment 6

Attachment 2: Proposed regulations

Attachment 3: Highly Migratory Species Management Team Report on Deep-Set Buoy Gear Authorization Final Preferred Alternative Magnuson-Stevens Act Section 303(B)(6) Evaluation

Cc: Council Members

Mr. Ryan Wulff, NMFS West Coast Region, ARA Fisheries

Ms. Rachael Wadsworth, NMFS West Coast Region, Acting HMS Branch Chief

Ms. Kathryn Kempton, NOAA GC