



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648-BG81

Fisheries off West Coast States; Highly Migratory Fisheries; Amendment 5 to the Highly Migratory Species Fishery Management Plan; California Drift Gillnet Fishery; Implementation of a Federal Limited Entry Drift Gillnet Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 5 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) for review by the Secretary of Commerce. The intent of Amendment 5 is to implement a federal limited entry (LE) permit for the California/Oregon large-mesh drift gillnet (DGN) fishery. The amendment would bring the State of California's LE DGN permit program under Magnuson-Stevens Fishery Conservation and Management Act (MSA) authority. All current California DGN permit holders would be eligible to apply for, and receive, a federal DGN permit and no additional DGN permits would be created. The amendment is administrative in nature and is not anticipated to result in increased activity, effort, or capacity in the fishery.

DATES: Comments on Amendment 5 must be received by *[Insert date 60 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments identified by NOAA-NMFS-2017-0052, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0052>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Lyle Enriquez, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2017-0052” in the comments.
- *Instructions:* Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of Amendment 5 and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2017-0052 or by

contacting the Regional Administrator, Barry Thom, NMFS West Coast Region, 1201 NE Lloyd Blvd, Portland, OR 97232-2182, or *RegionalAdministrator.WCRHMS@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Lyle Enriquez, NMFS, West Coast Region, 562-980-4025, or *Lyle.Enriquez@noaa.gov*.

SUPPLEMENTARY INFORMATION:

The HMS FMP was prepared by the Council and is implemented under the authority of the MSA by regulations at 50 CFR part 660. Although it adopted all conservation and management measures in place under various federal statutes (e.g., Marine Mammal Protection Act, Endangered Species Act) and state regulations, the HMS FMP did not incorporate the LE DGN permit programs of California and Oregon. Currently, the large-mesh DGN fishery (14" minimum mesh size) is federally managed under the HMS FMP and via regulations of the states of California and Oregon to conserve target and non-target stocks, including protected species that are incidentally captured. California has an active LE DGN program, Oregon no longer issues DGN permits, and DGN fishing is prohibited in Washington.

Since 2014, the Council has considered transitioning California's LE DGN permit program from state to MSA authority. On March 12, 2017, the Council adopted a final preferred alternative that would transition the State of California issued LE DGN permit program from state management to federal management under MSA authority and entitle all fishermen authorized to fish with large-mesh DGN gear under state law to be eligible to receive a federal LE DGN permit. As of August 31, 2017, 70 California LE DGN permits were issued for the 2016-2017 fishing season, and 67 have been renewed for the 2017-2018 fishing season. The average number of active DGN vessels per year from 2010 through 2016 is 20 vessels. The

action would neither increase capacity within the DGN fishery, nor would it incentivize or stimulate fishing effort or activity of current latent permits. After the initial issuance of a federal DGN permit, no additional permits would be issued, and permits that are not renewed in future years would be permanently expired by NMFS.

In order to participate in the DGN fishery, current participants must possess a State of California LE DGN permit, a California commercial fishing license, a California general gill/trammel net permit, and a California swordfish permit. Additionally, the vessel that the participant fishes from must have a federal Pacific Highly Migratory Species (HMS) permit with a DGN gear endorsement. After the LE DGN permit transitions from the State of California to federal management, each participant will need to hold all the same permits and licenses, except that the federal LE DGN permit will take place of the State of California LE DGN permit. Although these permits and licenses would be required to fish, possession of a current and up-to-date State of California LE DGN permit is the only permit required to initially obtain a federal LE DGN permit.

This amendment would adopt many of the current State of California management measures associated with the fishery. For example, NMFS would adopt current California requirements regarding the assignment of a permit (i.e., issued to an individual and assigned to a specific vessel), the transfer of permits between permittees (i.e., a permit must be held for three years before it is eligible to be transferred), and an annual renewal cycle.

Upon the date of publication of the final rule to implement Amendment 5, all 70 state-eligible permit holders would be eligible to receive a federal DGN permit if they have renewed their state DGN permit by March 31, 2018. Permit holders who fail to renew their state DGN

permit by March 31, 2018, will not be eligible for a federal DGN permit. As of August 31, 2017, 67 permittees have renewed their state LE DGN permit. If a state LE DGN permit is transferred after publication of the proposed rule to implement Amendment 5, the transferee, but not the transferor, would be eligible to receive a federal LE DGN permit upon publication of the final rule.

Federal LE DGN permits would be issued annually for the fishing year starting April 1 and ending March 31 of the following year. Permits would expire on March 31 of each year and, after initial issuance (expected in 2018), the permit renewal deadline would be April 30 of the fishing year. A completed DGN permit renewal form must be received by NMFS no later than close-of-business April 30. Any renewal form received after that date would result in the permanent expiration of the Federal DGN permit. A permit owner who fails to submit a renewal by the deadline may submit a renewal form to NMFS with a written statement that the failure to renew the permit by the deadline was proximately caused by the permit owner's illness or injury. When a permit owner has died, the owner's estate or other personal representative may submit a statement explaining that the permit owner's death has prevented a timely renewal. The permit holder, or in the case of a deceased permit owner, the estate or other personal representative, will need to provide written proof of illness, injury or death. NMFS will not consider any such renewal request made after July 31. If the permit expires, it would permanently expire and NMFS would not reissue the permit. A permittee would need to hold a federal LE DGN permit for three or more years before it would be eligible to be transferred. This vesting period would extend across both state and federal permit programs (i.e., if a permit holder held a state LE

DGN permit for two years and a federal LE DGN permit for one year, the permit may be transferred).

Public comments on Amendment 5 must be received by [*insert date 60 days after date of publication in the FEDERAL REGISTER*], to be considered by NMFS in the decision whether to approve, disapprove, or partially approve Amendment 5. NMFS expects to publish and request public comment on the proposed regulation to implement Amendment 5 in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received during the comment period for the amendment, whether specifically directed to the amendment, or the proposed rule, will be considered in the approval/disapproval decision.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 12, 2017.

Emily H. Menashes,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.