

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE REPORT ON HIGHLY MIGRATORY SPECIES EXEMPTED FISHING PERMIT APPLICATIONS

The California Department of Fish and Wildlife (CDFW) has reviewed the three exempted fishing permit (EFP) applications under consideration for the Pacific Fishery Management Council's (Council's) September 2021 meeting. CDFW appreciates the applicants' efforts to clarify their intended activities. Based on discussions with the applicants, other stakeholders, and our enforcement and legal staff, we are providing the following information and recommendations.

Snap Gear

While there are three separate EFP applications, two are substantially similar, and may be considered together in regard to the information they will provide and concerns regarding potential impacts. The applications from Mr. John Bateman ([Agenda Item D.3, Attachment 1](#)) and Mr. Austen Brown ([Agenda Item D.3, Attachment 2](#)) request the use of hook and line gear to test the ability to catch Highly Migratory Species (HMS). Mr. Brown identifies the gear type as "Midwater Snap Gear" (Snap Gear), which will be the term used throughout the rest of this report for both EFP applicants. Mr. Brown is requesting authorization for his own vessel, and Mr. Bateman is requesting authorization for his vessel along with three other vessels.

The Snap Gear requests are similar in many ways to the previously approved request from Mr. John Hall (September 2018, [Agenda Item H.2, Attachment 1](#)), which was never fished. There are, however, some key differences. Table 1 compares the Hall EFP with the two Snap Gear EFP requests for several key gear configurations and other features.

Table 1. Comparison of HMS hook and line EFP requests.

EFP:	Hall	Brown	Bateman (N of Conception)	Bateman (S of Conception)
Total Line Length:	5 nm	5 nm (5 sections, each 300-500 m)	10 nm	5 nm
# Hooks:	16-24/section	5-15/section (25-75 total)	300/vessel	150/vessel
Hook Depth:	50-350 m	25-75 m buoy lines + 12 m gangions (below thermocline)	"Shallow" 9/1-1/31 "Deep" (>30 m) 5/1-1/31	"Shallow" 9/1-1/31 "Deep" (>30 m) 5/1-1/31
Soak Time:	Sunrise-set	2-4 hrs	N/A	N/A
Distance from Shore:	>50 nm*	>20 nm	>12 nm	>12 nm
Time of Day:	Daytime only	Day/Night	Unstated	Unstated

* Except where leatherback critical habitat or the Davidson Seamount Management Zone 4 extend beyond 50 nm from shore; and within the Leatherback Critical Habitat.

Prohibited in Pacific Leatherback Conservation Area and Loggerhead Conservation Area during DGN closure periods

CDFW supported the 2018 Hall EFP for its ability to provide new information on potential gear that could target swordfish in quantities similar to the Drift Gill Net fishery while reducing bycatch. We still support research and investigations that will provide information on new and more sustainable gear types. There are two key differences in both Snap Gear EFP requests that create a potential for bycatch that would not be acceptable to CDFW – fishing both day and night and

fishing at shallower depths. Because of this, CDFW recommends that Snap Gear EFP conditions include measures specifically designed to monitor and reduce bycatch including specific protective measures; 100% human observer coverage for all EFP fishing, and limits that halt fishing in the event that bycatch of protected or prohibited species occurs. If these measures are implemented, the Snap Gear EFPs could provide important information on whether the gear may be a viable alternative for U.S. West Coast swordfish and other HMS. CDFW proposes that the following conditions be included in any approved Snap Gear EFP. We recommend that each EFP be issued individually to the Captain and Vessel indicated on the applications.

Gear Configuration:

Total Line Length: 5 nm

Hooks: Not to exceed 75 total Circle hooks (18/0) per set

Leaders: 2-mm monofilament only, no wire

Hook Depth: > 30 m as established by weighted buoy line and gangions in combination

Soak Time: Not to exceed 4 hours

Distance from Shore: > 20 nm seaward of all mainland shorelines and islands

Time of Day: 24 hours

Protective Measures:

1. Line must remain attached to the vessel
2. 100% human observer coverage
 - a. Electronic monitoring may be tested during the EFP, but will not replace human observers unless approved as an alternate bycatch monitoring method
3. EFP participants must follow EcoCast recommendations to avoid turtles when available
4. Possess de-hooking devices on board at all times for use if needed
 - a. Endeavor to cut snap lines as close to the hook as possible on released species
5. Side-set hydraulic line shooter will be employed when setting all gear
6. No lazy lines will be used during fishing activity
7. Leaded swivels (45 – 60 gram) will be used as close to hook as possible on each snap line
8. All non-marketable live sharks will be released alive
 - a. Dead sharks must be retained unless prohibited from commercial take
9. Comply with all sea turtle protection measures required and pursuant to 50 CFR § 660.712(b)
10. Comply with all seabird protection and avoidance measures required and pursuant to 50 CFR § 660.712(c)
11. Possess a valid and current Protected Resources Workshop certification pursuant to 50 CFR § 660.712(e)
12. Gear will be clearly marked and lit. Gear will never be intentionally set in known shipping lanes, areas of high traffic, or areas where whale activity is observed
13. Each buoy will have a plastic breakaway link connecting buoy and buoy line in order to mitigate the potential negative effects on a whale if one were to interact with the gear

Individual Vessel Bycatch Limitations

1. **ESA Listed Species** - If a single species listed under the Endangered Species Act (ESA) is taken all Snap Gear EFP vessels will cease fishing and the responsible EFP permit holder must, within 24 hours, report any such interactions and release condition to the National Marine Fisheries Service (NMFS) West Coast Region. All Snap Gear EFP Vessels will not resume EFP fishing until granted authorization from NMFS West Coast Region, which may require a renewed ESA consultation.
2. **MMPA Species** - If a single species listed under the Marine Mammal Protection Act is injured or killed the responsible vessel will cease fishing and the EFP permit holder must, within 24 hours, report any such interactions and release condition to the National Marine Fisheries Service (NMFS) West Coast Region. The responsible vessel will not resume EFP fishing until granted authorization from NMFS' West Coast Region. Depending on the species, numbers, and circumstances, NMFS may request Council input on whether the EFP should resume.
3. **Finfish** - If more than 10 marlin are injured or killed cumulatively during the EFP period, the vessel will cease fishing for the remainder of the EFP period.

Deep-Set Buoy Gear in State Waters

The third application is from Mr. Nathan Perez to test the feasibility of fishing Deep-Set Buoy Gear (DSBG) in specific areas within state waters ([Agenda Item D.3, Attachment 3](#)). While CDFW supports this proposal, with some additional conditions, it has been determined that NMFS cannot issue a DSBG EFP for activities occurring within state waters. CDFW recommends that NMFS extend Mr. Perez's EFP for activities outside State Waters as requested. We encourage Mr. Perez to submit an application to the State of California's new Experimental Fishing Permit program, currently being considered by the California Fish and Game Commission. It is anticipated that the program will be operational in 2022.