The Honorable Mark Leno
Assemblyman, Thirteenth District
California State Capitol
P.O. Box 942849
Sacramento, California 94249-0013

Dear Mr. Leno:

I am writing in response to your May 22, 2008, letter and accompanying Assembly Joint Resolution 62 requesting that NOAA’s National Marine Fisheries Service (NMFS) deny approval of a shallow-set longline (SSLL) exempted fishing permit (EFP) application until decisions are made on leatherback sea turtle critical habitat and the status of North Pacific loggerhead sea turtle and its critical habitat is clarified. Final decision on these actions is expected in late 2008 and members of my staff are on the teams reviewing the petitions. The EFP would preliminarily explore whether SSLL gear is effective at catching swordfish within the U.S. West Coast exclusive economic zone (EEZ) while minimizing impacts to protected species. If approved, NMFS would require specific terms and conditions for how the EFP would be conducted. The complete list of mitigation measures, including 100 percent observer coverage, trip and set limits, and a variety of measures aimed at minimizing adverse environmental impacts from the activity are attached. In 2007, my staff conducted an Endangered Species Act Section 7 consultation and wrote a biological opinion on the action and contributed to the NEPA analysis of this project. Both of those documents are available online and contain the best available and updated information on protected species and marine resources.

Your letter and resolution speak to threats to living marine resources, especially Pacific leatherback and loggerhead sea turtles, from the use of SSLL gear. NMFS shares your concern over the potential impacts to these and other living marine resources from fishing gear. However, NMFS scientists, their colleagues and the fishing industry continue to improve SSLL gear and its deployment as a more selective, and thus “cleaner” method for targeting swordfish while continuing to reduce ecosystem impacts. These technological and operational modifications have proven very successful in reducing sea turtle interactions and post-hooking mortalities in existing domestic (i.e., Atlantic and Hawaii) and international (e.g., Italy, Brazil, and Uruguay) swordfish fisheries compared to the use of traditional SSLL gear, while maintaining economically viable fisheries. NMFS is committed to encouraging the use of modified SSLL gear as a means of providing protection to sea turtles, which are highly migratory and travel across entire ocean basins.
The EFP was vetted through the Pacific Fishery Management Council (Pacific Council) process and they recommended that NMFS approve the permit. The Pacific Council, among the other seven regional councils, was established under the authority of the Magnuson-Stevens Fishery Conservation and Management Act to exercise sound judgment in the stewardship of fishery resources and the Pacific Council has demonstrated significant leadership for ensuring that fishery management recommendations are integrated into ecosystem sustainability. Their recent recommendation to prohibit fishing for krill off the West Coast is testimony to that leadership.

There is no doubt that cost-effective fishing gears will interact to some degree with protected species. The EFP would allow a glimpse as to whether modified SSLL gear is as successful in catching swordfish off California as has been shown in the Hawaii and North Atlantic SSLL domestic swordfish fisheries while minimizing interactions with protected species. This small step may also preview an important conservation strategy that is being lost in this debate. Sea turtles and marine mammals migrate across large areas of the ocean and are exposed to fishery impacts from many nations. NMFS believes that if a selective fishing method can be found to harvest swordfish in the EEZ off its coast, California can become less reliant on foreign imports of swordfish to meet market demand. By not allowing the proposed EFP to go forward, California will forego exploring an opportunity that has the potential to reduce this reliance and will continue meeting U.S. demand for swordfish by supporting fishing in other nations. It is important to note that many of those nations do not regulate their fishing impacts on sea turtles and other living marine resources, therefore, reliance on foreign caught swordfish can have result in significant bycatch and mortality of sea turtles and other marine resources.

In closing, I want to thank you for your interest in conserving Pacific sea turtles and hope that this interest can be channeled in assisting NMFS, industry and non-governmental organizations in seeking cost-effective conservation strategies for restoring Pacific sea turtle populations that yield the greatest biological benefits while preserving the viability of California fishing communities.

Sincerely,

Rodney R. McInnis
Regional Administrator

Attachment

cc:
Assembly Member Berg
Assembly Member Evans
Assembly Member Hancock
Assembly Member Jones
Assembly Member Nava
Senator Wiggins
HIGHLY MIGRATORY SPECIES (HMS) FACT SHEET

Exempted Fishing Permit to Conduct Shallow-set Longline Fishing for Swordfish

Exploring New Fishing Techniques: Exempted fishing permits (EFP) are issued by NOAA’s National Marine Fisheries Service (NMFS) to allow for experimental fishing activities otherwise prohibited under regulations for HMS fishing off Washington, Oregon and California. This EFP would allow a single vessel to explore whether shallow-set longline gear, using the latest gear and operational modifications proven to reduce protected species bycatch in other longline fisheries, is a cost-effective alternative for reducing bycatch in the California and Oregon swordfish fishery in an area 50 to 200 nautical miles offshore. No information currently exists on how this gear, specifically designed to reduce sea turtle bycatch while effectively maintaining a commercially viable catch of target swordfish, will operate in the California Current.

Reduced Sea Turtle Bycatch: The vessel in question would target swordfish utilizing large circle hooks (18/0) and fish bait. This combination has proven successful in existing domestic (Atlantic and Hawaii) and foreign (Italy, Brazil, and Uruguay) swordfish fisheries for reducing sea turtle interactions with longline gear as compared to traditional J-hooks with squid bait while maintaining an economically viable fishery.1,2,3,4

Protected Species Interactions: It is not likely that short-finned pilot whales or short-tailed albatross will be incidentally taken in the fishery; however, species caps5 were included as precautionary steps by the Pacific Fishery Management Council.

Reduced Fish Bycatch Mortality Rates: The use of circle hooks alone does not appreciably reduce bycatch of non-target species (e.g. blue sharks) but it does appear to lead to increased survivorship of released fish because circle hooks catch fish in the mouth more often than traditional J-hooks which hook fish more often in the throat or gills.1,6 Hawaii shallow-set longline observer records for trips utilizing circle hooks indicate approximately 95 percent of captured blue sharks were released alive.1

100 Percent Observer Coverage: NMFS trained observers would accompany all trips and monitor 100 percent of the fishing operations. The amount of fishing would be strictly regulated by imposed trip limits and longline set limits, and a variety of mitigation measures (see following page) would be required to minimize adverse environmental impacts from the activity.

Potential Benefits to West Coast Fishing Communities: Using more conservative methods to catch swordfish is important for West Coast-based fishermen because it could maintain, or potentially increase, swordfish catch-per-unit of effort while decreasing bycatch and bycatch mortality. Fish processors and

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5If any species cap is reached the exempted fishing permit would be revoked.

consumers would benefit from an additional supply of locally-caught fresh swordfish while reducing U.S. reliance on foreign imports which are not captured nor managed with the same level of scrutiny and high standards that U.S. fisheries must meet. This issue is also important to fishery scientists and managers who view this gear as a realistic means to further minimize bycatch while establishing a commercially viable fishery.
Summary of Terms & Conditions of the Exempted Fishing Permit:

1. 100 percent observer coverage, paid for by NMFS
2. All observers shall carry satellite phones provided by NMFS and immediately inform NMFS of any marine mammal, sea turtle, or seabird capture or interaction
3. A single vessel participating
4. Maximum of 14 sets per trip
5. Maximum of four trips between September and December (up to 56 total sets for the entire duration of the proposed EFP)
6. Fishing is only authorized within the West Coast EEZ and no SSLL gear shall cross this boundary
7. No fishing within the Southern California Bight as defined by the applicant
8. Utilizing shallow-set longline gear configuration:
   a. 50–100 km mainline
   b. 18 m floatline
   c. 24 m branchlines
   d. 2–8 hooks between floats
   e. 400–1,200 hooks per set
   f. Set fishing gear so hooks are at a depth of 40–45 m below the surface
9. Use 18/0 circle hooks with a 10 degree offset to fish for swordfish (as described at 50 CFR 665.33(f))
10. Use mackerel or mackerel-type bait (as described at 50 CFR 665.33(g))
11. Allow the use of light sticks
12. Require use of TDRs to estimate fishing depth (The number of TDR units deployed per set and per trip would be determined by NMFS in consultation with the applicant.)
13. Gear may not be set until one hour after local sunset and must be fully deployed before local sunrise
14. Prohibit the use of a line shooter for setting the gear
15. Require use of a NMFS-approved dehooking device to maximize finfish (e.g., blue shark) bycatch survivability
16. A catch cap$^7$ of 12 striped marlin
17. A take cap of one short-finned pilot whale (this species is not ESA-listed)
18. A take cap of five leatherback turtles, or one leatherback mortality
19. A cap of one short-tailed albatross
20. No fishing north of 45° N. latitude
21. No fishing within 50 nmi of the coastline

Link to the complete Environmental Assessment, Finding of No Significant Impact and Biological Opinion for the exempted fishing permit:


June 2008

Southwest Regional Office
National Marine Fisheries Service
501 West Ocean Blvd.
Long Beach, CA 90802-4213
(562) 980-4000

$^7$ Once any cap is reached the EFP will immediately be terminated.