



Pacific Fishery Management Council

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Dorothy M. Lowman, Chair | Charles A. Tracy, Acting Executive Director

April 26, 2016

Senator Ben Allen
California State Senate
State Capitol, Room 2054
Sacramento, CA 95814

Dear Senator Allen,

The Pacific Fishery Management Council (Council) is concerned that California State Senate Bill 1114 (SB-1114), if enacted, would materially impair our ability to develop new measures that are under consideration for West Coast highly migratory species (including drift gillnet) fisheries.

The Council was established by the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (Magnuson-Stevens Act), and has jurisdiction over more than 119 fish species in Federal waters off Washington, Oregon, and California.

As you know, SB-1114 has two major components. First, the bill would attempt to phase out the large mesh gillnet fishery for swordfish and shark, which occurs in Federal waters off of California and is actively managed by the Federal government under the HMS Fishery Management Plan developed by the Council. Second, it would establish a state permit, with specific qualifying conditions, for California vessels fishing in a federally-authorized fishery using deep-set buoy gear.

Phasing Out the Drift Gillnet Fishery

The Council has been considering changes to the drift gillnet fishery since 2014. Since then, the Council considered phasing out the large-mesh drift gillnet fishery in Federal waters, but decided instead to develop measures intended to make it a more environmentally sustainable fishery. In 2015, the Council recommended that National Oceanic and Atmospheric Administration implement protected species caps, which, if reached, would cause the fishery to close for at least the remainder of the fishing season. These caps exceed the standards imposed by the Endangered Species Act and Marine Mammal Protection Act. National Marine Fisheries Service (NMFS) is currently working on regulations to implement this proposal. In order to ensure more precise estimates of the infrequent protected species takes in the fishery, the Council requested NMFS increase at-sea monitoring of the fishery to 100 percent by 2018.

The Council has also established performance standards to determine whether future bycatch reduction measures should be recommended, and has recommended that NMFS test gear modifications, use of ecosystem indicators to manage time/area regulations, and other methods to reduce take of protected species in this fishery. NMFS is currently reviewing an exempted fishing permit to conduct these studies. In 2014, the Council stated its intent to develop a Federal limited entry permit to allow more direct control over participation in this fishery and established a control date of June 23, 2014, which was published in the *Federal Register* as an Advanced Notice of

Proposed Rulemaking (79 FR 64161). This control date is intended to promote public awareness of the Council's interest and the potential for a future rulemaking.

SB-1114 would prohibit transfers of the current state drift gillnet shark and swordfish permit and eliminate "latent" permits; these provisions are apparently intended to phase out the fishery as currently-active participants cease participation. These provisions, if enacted, would impair the Council's ability to manage the large mesh drift gillnet fishery under Federal law.

Transitioning to a Deep-Set Buoy Gear Fishery

In March 2016, the Council began scoping the development of a Federal swordfish fishery using deep-set buoy gear. The Council sees the creation of a Federal limited entry permit as an important program component, and recognizes the link between such a permit and one for the Federal large-mesh drift gillnet fishery.

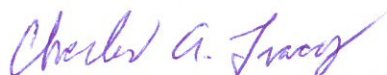
SB-1114 would purport to create a state permit for any Federally-authorized deep-set buoy gear fishery, establish initial qualification criteria for such permits, and conditions under which the number of permits would be expanded at a future date. While the establishment of a state permit would not preclude the Council from developing a Federal limited entry permit, the proposed conditions of the state permit program could substantially impair the Council's ability to design a Federal permit program as required under the Magnuson-Stevens Act.

The Council includes one member representing the state of California itself, and three additional members from the state of California who were appointed by the Secretary of Commerce. The Council recommends that you coordinate closely with members of the Council's California delegation while considering state laws to regulate highly migratory species fisheries. We would be happy to provide any assistance needed.

In conclusion, the permitting provisions in SB-1114 would impair the Council's ability to propose and monitor measures for the large-mesh drift gillnet fishery described above, as well as the Council's flexibility in establishing a Federal deep-set buoy gear fishery, including a Federal limited entry permitting regime, if warranted.

Thank you for your consideration. Should you have any questions, please feel free to contact me or Dr. Kit Dahl, our staff officer for highly migratory species, at kit.dahl@noaa.gov.

Sincerely,



Mr. Charles A. Tracy
Acting Executive Director

JDG:kma

cc: Ms. Dorothy Lowman
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