



October 21, 2011

Mr. Eric Schwaab
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East West Highway
Silver Spring, MD 20910

RE: West Coast Swordfish Fishery

Dear Mr. Schwaab:

We are disappointed that the National Marine Fisheries Service (NMFS) is once again pushing to increase domestic Pacific swordfish landings and fishing effort with gears known to have high levels of bycatch. In this time when our country is seeking to promote sustainable industries and ecosystem-based approaches to management that protect and maintain the health and biodiversity of our oceans, it is unreasonable that NMFS continues to allow the California drift gillnet swordfish fishery to kill dolphins and sea lions, and to toss back, dead and damaged, 20 to 30 percent of its catch of fish. Further, it would be unreasonable to continue to invest in and promote efforts to develop a pelagic longline fishery for swordfish when the State of California and the Pacific Fishery Management Council have already taken actions to prohibit it due to the high levels of bycatch associated with this fishery and the take of endangered and threatened species.

We are writing to request that NMFS end this current effort to expand a west coast based drift gillnet or pelagic longline fishery for swordfish. If, however, NMFS is going to spend valuable time and taxpayer money investigating approaches to expand commercial fishing for swordfish on the west coast, you can expect serious challenges by conservation organizations and others if those efforts are 1) not associated with the phase out and prohibition of drift gillnet gear, and 2) associated with any experimental gear that is not significantly different from the drift gillnet or pelagic longline gear that NMFS has already tried, but failed to advance in recent years.

At the September 2011 meeting of the Pacific Fishery Management Council (PFMC), NMFS gave a report on the California-based driftnet fishery for swordfish and made the argument that NMFS and the PFMC must explore how to allow for greater catch levels of swordfish in U.S. waters in order to fulfill the local demand for swordfish. NMFS staff suggested in their report, without providing any supporting evidence, that if we increase domestic swordfish catch this will decrease the take of endangered leatherback sea turtles by other Pacific nations targeting swordfish. In response to the NMFS request, the PFMC directed its Highly Migratory Species (HMS) Management Team and Advisory Subpanel to provide information to inform a decision on whether to change the current driftnet swordfish fishery, scheduled for the March 2012 PFMC meeting.

If the agency's primary goal continues to be to increase domestic regional production of swordfish with a west coast fishery using drift gillnets and/or pelagic longlines, the result will be the increased take and mortality of endangered sea turtles, marine mammals, sharks, tunas, and many other fishes. We suggest, however, the primary goal ought to be a comprehensive international plan to protect marine mammals and recover endangered Pacific leatherback and loggerhead sea turtles from nesting beaches, across migratory pathways and in foraging hotspots. NMFS could work towards this goal by demanding changes to fisheries through international fisheries organizations to which the United States is a member, such as the Inter-American Tropical Tuna Commission (IATTC) and the Western and Central Pacific Fishery Commission (WCPFC), and also by using legal tools under the Magnuson-Stevens Fishery Conservation and Management Act and Marine Mammal Protection Act to restrict swordfish imports by Nations not meeting U.S. conservation standards.¹

In particular, we urge NMFS to immediately finalize and publish a rulemaking to implement provisions of the Marine Mammal Protection Act that require foreign fisheries to meet the same levels of protections as domestic fishers for marine mammals. NMFS published an advanced notice of proposed rulemaking in April 2010 to develop regulations to implement these provisions and additional measures to ensure that foreign fleets protect all protected species including sea turtles under the Endangered Species Act.

Since the public comment period closed more than a year ago, NMFS has not moved forward on these important regulations. Doing so would help level the playing field for swordfish fishers in the U.S., and would likely be a far more effective option for providing sustainable seafood to the U.S. market than expanding the west coast swordfish fishery.

The PFMC, California legislators, the California Coastal Commission, conservation organizations, and thousands of members of the public have engaged in the debate over the west coast swordfish fishery now for decades. One thing is abundantly clear: these groups do not want to see an unselective west coast swordfish fishery that is going to kill marine mammals, endangered sea turtles and result in the annual bycatch of thousands of iconic fish and sharks. In 1992 the California Department of Fish and Game banned all pelagic longline fishing in the EEZ off the California Coast. Since 2004, longline gear used to target swordfish has been prohibited on the high seas off the U.S. west coast following NMFS' determination that the bycatch of North Pacific loggerhead sea turtles would violate the Endangered Species Act. In response to bycatch concerns, the State of Washington prohibits drift gillnet gear for swordfish and the State of Oregon revoked all of its drift gillnet permits for swordfish and thresher sharks in 2009. What is more, due to the projected high catch levels of non-target fish, marine mammals and sea turtles, the PFMC voted in April 2009 for the 'no action alternative' in a Draft Environmental Impact Statement that would have allowed for a west coast based high seas shallow-set longline

¹ 16 U.S.C. 1862i §608 'Actions to Strengthen International Fishery Management Organizations' and 16 U.S.C. 1826k §610 'Equivalent Conservation Measures' and 16 U.S.C. § 1371(a)(2) 'The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards.'

fishery for swordfish.² This high seas fishery proposal followed multiple failed Experimental Fishing Permit proposals to expand the geographic and temporal scope of the drift gillnet fishery into the Pacific Leatherback Conservation Area, and to allow for a single vessel to fish swordfish in the EEZ off California using pelagic longline gear.

In July 2008, the California Legislature passed AJR 62 with the resolution,

That the Legislature of the State of California requests that the National Marine Fisheries Service defer consideration of any efforts to introduce shallow-set longline fishing off the California coast, both inside and outside the EEZ, until Pacific leatherback sea turtle critical habitat is established, the federal status of the North Pacific loggerhead sea turtle is clarified, and *critical habitat is designated for the North Pacific loggerhead sea turtle, if it is designated as “endangered”*.
[emphasis added]

As you know, on September 22, 2011, NMFS issued a final rule determining that North Pacific loggerhead sea turtles are a distinct population segment and that they are endangered with extinction, thus uplisting them from “threatened” to “endangered”.³ Given this resolution, however, NMFS should not pursue any efforts to expand pelagic longline fishing for swordfish until critical habitat is designated for both loggerheads and leatherbacks. While we expect a final rule designating critical habitat for leatherback sea turtles by November 15, 2011, NMFS has not yet issued a proposed rule to designate critical habitat for North Pacific loggerheads meaning that any effort by NMFS to expand a longline fishery would be contrary to the expressed resolution of the California Legislature.

Meanwhile, the California drift gillnet fishery targeting swordfish and thresher shark has a high level of indiscriminate and wasteful bycatch that includes many species of fish plus the lethal take of marine mammals (~138 marine mammals per year),⁴ and at times, threatened and endangered sea turtles. Given this fishery’s track record with bycatch, it is baffling that less than 14% of fishing effort was observed in the 2008-09 fishery and less than 13% in 2009-2010 fishery,⁵ making it extremely difficult to accurately account for the bycatch of rare and endangered species known to be caught and killed by this gear. This is far under the 20%

² The proposed shallow-set longline fishery would have caught as bycatch, 3-9 leatherback sea turtles/ year, 4-27 loggerhead sea turtles/ year, 5-10 marine mammals per year, 5,900 – 30,900 sharks/ year, and 1,600-5,500 tuna/ year. NMFS 2009. Amednment 2 to the HMS FMP to authorize a shallow-set longline fishery seaward of the EEZ, PDSEIS, at 107, 72, and 99. PFMC Agenda Item D.2.a, Attachment 1, April 2009.

³ 76 Fed Reg. 58868 (September 22, 2011)

⁴ NMFS. 2011. National Bycatch Report, at 362

⁵ NMFS California/Oregon Drift Gillnet Observer Program. Observed Catch-2009/2010 Fishing Season. <http://swr.nmfs.noaa.gov/fmd/observer/catch0910.htm>

observer coverage required by the 2004 Biological Opinion (BI-OP)⁶ and the 30% coverage recommended by NMFS in the recently published National Bycatch Report.⁷

The NMFS National Bycatch Report finds that the bycatch of three marine mammal stocks in this fishery – the long-beaked common dolphin, short-finned pilot whale, and Northern right whale dolphin – exceed Potential Biological Removal levels defined in the Marine Mammal Protection Act and/ or the Zero Mortality Rate Goal.⁸ Even with such low observer coverage, the bycatch of loggerhead sea turtles was observed in 2006, the bycatch of a leatherback turtle was observed in 2009, and the fishery is known to take prohibited species such as white shark, basking shark and megamouth shark.

NOAA's National Bycatch Strategy and bycatch reduction efforts define bycatch as "discarded catch of any living marine resource plus retained incidental catch and unobserved mortality due to a direct encounter with fishing gear."⁹ This definition does not distinguish between live or dead discards; rather it includes all discards. In 2009, observers documented over 6 common molas discarded for every swordfish caught and an overall discard rate of 65% (number of animals discarded divided by total number of animals caught).¹⁰ Using NMFS' bycatch definition, this is a bycatch rate of 91% (number of animals discarded or incidentally caught divided by total catch). Furthermore, from May 1, 2008 to January 31, 2009 there were 1,060 drift gillnet sets with approximately 25% of the catch returned to the sea dead or damaged (over 4,800 fish), including over a thousand sharks of various species, tunas and others fishes.¹¹

We ask that you work with the Southwest Regional office of NMFS to end these repeated efforts to expand the west coast based drift gillnet fishery or pelagic longline fishery for swordfish. If anything, NMFS should be working to phase out and eventually close the California driftnet swordfish and thresher shark fishery once and for all, and in the meantime increase observer coverage to adequately monitor and account for all bycatch and discards, plus implement hard bycatch caps on all marine life taken including fish, marine mammals and sea turtles. We could envision exploration of other fishing gears that are substantially different from gillnets or longlines as part of a comprehensive strategy to develop a clean swordfish fishery, including potential expansion and/or marketing efforts focused on the harpoon fishery.

We also ask that NMFS develop and advance an international plan to protect and conserve marine mammals and sea turtles in fisheries from which the U.S. imports swordfish as described above. Clearly it is time to put an end to the indiscriminate killing and waste of marine life that has been occurring for decades in this driftnet fishery off the coast of California. Now is not the

⁶ National Marine Fisheries Service, Southwest Region, Sustainable Fisheries Division and Protected Resources Division, Endangered Species Act Section 7 Consultation – Biological Opinion, Highly Migratory Species Fishery Management Plan, U.S. West Coast Fisheries. February 4, 2004. Page 38: "A vessel is required to carry an observer about 20 percent of the time."

⁷ NMFS. 2011. National Bycatch Report, at 359

⁸ NMFS. 2011. National Bycatch Report, at 359

⁹ http://www.nmfs.noaa.gov/by_catch/bycatch_whatish.htm

¹⁰ NMFS California/Oregon Drift Gillnet Observer Program. Observed Catch-2009/2010 Fishing Season. <http://swr.nmfs.noaa.gov/fmd/observer/catch0910.htm>

¹¹ NMFS, at <http://swr.nmfs.noaa.gov/fmd/observer/catch0809.htm>

Mr. Eric Schwaab, NMFS

October 21, 2011

Page 5 of 6

time to take steps to expand this driftnet fishery or a pelagic longline fishery that will have similar, destructive impacts.

Sincerely,

Ben Enticknap
Pacific Project Manager
Oceana
222 NW Davis Street,
Suite 200
Portland, OR 97209

Teri Shore
Program Director
Turtle Island Restoration
Network
PO Box 370, Forest
Knolls, CA 94933

Catherine Kilduff
Staff Attorney
Center for Biological
Diversity
351 California St., Ste. 600
San Francisco, CA 94104

Enclosure: Table and Figure - Bycatch of marine mammals and fish species in the drift gillnet fishery

cc. Dan Wolford, Chair, Pacific Fishery Management Council
Rodney McInnis, Regional Administrator, NMFS SW Region
Mr. Jim Kellogg, President, California Fish and Game Commission

Table. Catch of marine mammals in the Drift Gillnet fishery after the Take Reduction Team requirement of acoustic “pingers” on nets was implemented. While observed takes declined after pingers were required, this fishery still catches and kills many marine mammals each year. From: PFMC and NMFS. March 2006. Draft EA, DGN EFP. PFMC Agenda Item J.3.a, Attachment 1, March 2006.

Dolphin, short-beaked common	112
Dolphin, long-beaked common	6
Dolphin, northern right whale	22
Dolphin, Pacific white-sided	7
Dolphin, Risso’s	9
Dalls Poropoise	1
Sea lion, California	84
Seal, Northern Elephant	17
Whale, Fin	1
Whale, Gray	3
Whale, Humpback	2
Whale, Minke	1
Whale, short-finned pilot	1
Whale, Sperm	2

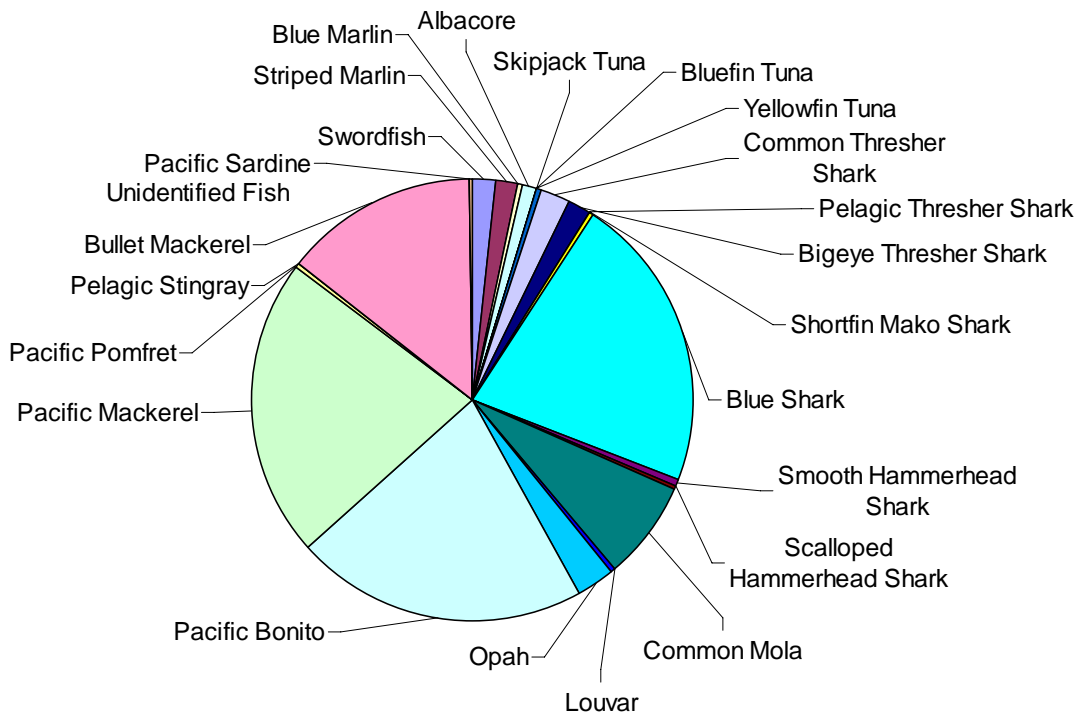


Figure. Discard mortality in the 2008-09 CA/OR Drift Gillnet Fishery. An estimated 3,595 fish were released dead based on observed rates from 146 sets and 1,060 total sets.