March 7, 2008

Dr. Donald McIsaac
Executive Director, Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220-1384

RE: Agenda Item C.3 – High Seas Shallow-Set Longline Amendment

Dear Dr. McIsaac and Members of the Council:

On behalf of Ocean Conservancy, I am writing to urge the Pacific Fishery Management Council (PFMC) to defer the development a management framework for a high seas shallow-set longline fishery off the west coast of the United States. We believe that the development of a high seas longline fishery is inappropriate given the potential ecological consequences. Instead, we recommend that the Council consider a broader range of alternatives to achieve the goal of providing more sustainable fishing opportunities while promoting the recovery of endangered sea turtles and over-exploited fish populations. We also encourage the Council to prioritize the development of a coordinated management strategy for pelagic fisheries with the Western Pacific Fishery Management Council.

A high seas shallow-set longline fishery poses a threat to endangered sea turtles.

Sea turtles throughout the Pacific are hovering on the brink of extinction due in large part to incidental mortality associated with fishing operations. Fisheries mortality has been especially problematic for loggerhead and leatherback sea turtles, with nesting population reductions in excess of 80 percent over the last three generations for both species. Leatherbacks are classified as “endangered” under the Endangered Species Act (ESA) and “critically endangered” by the World Conservation Union (IUCN). The status of the leatherback has been the focus of much attention in recent years, however conservation, protection and support is as critical for the loggerhead as for the leatherback. According to the latest surveys, there are fewer nesting leatherheads in the Pacific than nesting leatherbacks. The two major loggerhead populations in the Pacific are found in Japan and Australia, with less than 1,000 and 300 turtles, respectively, nesting annually. The IUCN’s Red List of Threatened Species identifies loggerheads as “endangered” while the ESA classifies loggerheads as “threatened” throughout their range. A pending petition to uplist and reclassify the Pacific loggerhead population as endangered under the ESA suggests that Pacific loggerhead populations warrant even greater protection.

The Pacific longline fisheries out of California and Hawaii were both previously found to cause jeopardy to leatherback and loggerhead sea turtle populations under the ESA. In November 1999, concerned about the high level of sea turtle mortality associated with longlining, Ocean
Conservancy (previously known as the "Center for Marine Conservation") secured an injunction restricting longline fishing under the fishery management plan (FMP) for pelagic fisheries in the western Pacific. The objective of the injunction was to reduce leatherback sea turtle mortality by the shallow-set longline fishery targeting swordfish around the Hawaiian Islands.¹ NMFS subsequently issued a Biological Opinion pursuant to Section of 7 of the ESA on the pelagics FMP. The agency concluded that continued operation of the fishery would jeopardize the existence of leatherback, loggerhead, and green sea turtles, and amended the FMP to close the Hawaii-based shallow-set longline fishery. The fishery was allowed to re-open again in 2004 subject to the conditions that only large 18/0 circle hooks be used, that an effort cap be established to control the number of longline sets, and that a hard cap on turtle take be established to close the fishery if it approached the limits of its take authorization. In March 2006, the annual hard cap on take of loggerheads was reached after the fishery operated for less than three months.²

Scientists have concluded that, “[t]he critical issue for an individual turtle is the likelihood of capture across an ocean region, not capture by a particular nation. With multiple fleets deployed the cumulative effects of pelagic longlines across fleets in large ocean regions must be taken into account.”³ It would be inappropriate to allow the capture of turtles by a California-based fishery when the Hawaii fishery was closed for exactly this reason only two years ago. The Hawaii and California based fleets fish in the same manner, often in the same area, and catch the same turtles.⁴ In addition, the fleets consist of many of the same boats that have had a history of moving back and forth to avoid the closures to protect sea turtles that have alternated between Hawaii and California in recent years.

Where fish stocks and associated non-target species act as a single unit, a more comprehensive and coordinated impact evaluation is crucial. The ad hoc approach employed by U.S. fishery managers does not properly account for the cumulative effect of all U.S. managed pelagic fisheries on fish and wildlife populations. Evaluations of the relative impact of longline fishing on Pacific turtle populations have concluded that “[a]lthough bycatch rates from individual longline vessels are extremely low, the amount of gear deployed by longline vessels suggests that cumulative bycatch of turtles from older age classes is substantial.”⁵ The conservation community has repeatedly called for a comprehensive evaluation of the impacts of all U.S. longlining in the Pacific on imperiled sea turtle populations, yet that essential step still has not occurred.

The recovery plan for Pacific Leatherback populations noted that “...the waters off the west coast of the United States may represent some of the most important foraging habitat in the entire world for the leatherback turtle.”⁶ In June 2007, NMFS rejected an EFP application that would have authorized expansion of the drift gillnet fishery into the Pacific Leatherback Conservation Area, citing recent satellite-tracking studies which confirm the importance of the waters off the

² 71 Fed. Reg. 14824 (March 24, 2006)
California coast as vital foraging grounds for endangered leatherback turtles. Since the tracking studies referenced by NMFS in their decision were limited to the neritic zone, scientists speculate that the number of sea turtles and the leatherback habitat range off the coast of California and Oregon may be underestimated. Despite these findings, the proposed high seas longline fishery would overlap with portions permit Pacific Leatherback Conservation Area and occur during the time of year when leatherbacks are migrating through the region.

Non-fishery conservation measures do not offset fisheries-related sea turtle mortality.

Sea turtles face a myriad of threats throughout their range and at every stage in their life cycle. Under the ESA, NMFS has a duty to use its authority and all of its programs to provide for the conservation of endangered and threatened species. As such, we strongly support both domestic and international conservation measures that will help reverse the decline of Pacific sea turtle populations and promote their recovery. Protecting nesting beach habitat, identifying prime foraging grounds, educating the public and engaging local communities is critical to the recovery of sea turtle populations around the world. We are troubled however with the suggestion that fisheries-related sea turtle mortality could be offset with non-fishery conservation strategies. It would not be appropriate (or consistent with Section 7(a)(2) of the Endangered Species Act) to consider non-fishery related conservation measures as offset measures or compensatory strategies justifying additional fishery-related mortality. Despite strong scientific backing, the ultimate effect of such non-fishery conservation measures on turtle populations is, at this point, entirely speculative. While we certainly hope that they will result in larger populations of turtles in the future, predictions that larger numbers of nests and eggs will be saved cannot be used to allow takes of any existing turtles, let alone reproductively mature animals. For example, the recovery of the Kemp’s Ridley turtle is the result of decades of conservation of primary nesting habitat in Mexico and full implementation of measures to protect these animals from drowning in shrimp trawls. Only by focusing on reducing mortality throughout the range of these species and at all stages of life will recovery efforts be successful.

Increased longline fishing effort and capacity threatens vulnerable fish populations.

In addition to potential negative interactions between shallow-set longline gear and endangered sea turtle populations, we are concerned about the impact of increased fishing effort and capacity on select target and non-target fish species. While the proposed high seas shallow set longline fishery specifies swordfish as the target catch, other more vulnerable highly migratory species may be targeted or caught incidentally. The 2007 draft environmental assessment for the failed exempted longline fishery within the EEZ noted that shallow set longlining off the west coast may lead to a greater level of interactions with protected shark species including great white sharks and basking sharks. Characterized by their slow growth, late maturity and low fecundity, shark species are particularly vulnerable to the impacts of longline fisheries.

Proponents of the high seas longline fishery acknowledge that several tuna species are likely to be caught intentionally and incidentally to shallow-set longline activities. Of greatest concern is the potential impact to yellowfin, bigeye and albacore, all of which have been classified as overfished and/or experiencing overfishing. Both the Inter-American Tropical Tuna

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Commission (IATTC) and U.S. stock assessment scientists have identified Pacific bigeye and yellowfin tuna populations as being overfished and subject to overfishing.\(^9\) The IATTC has put forth a resolution which states that “bigeye stocks are below the level that would produce the average maximum sustainable yield (AMSY)” and directs member nations to implement a seasonal closure for commercial purse seine and longline vessels targeting bigeye (and yellowfin) tuna.\(^{10}\) Likewise, the IATTC and WCPFC adopted resolutions in 2005 identifying North Pacific albacore populations as experiencing overfishing and requiring member nations to cap current levels of effort.\(^{11}\) The first Stock Assessment and Fishery Evaluation (SAFE) Report for the U.S. West Coast HMS FMP echoed this conclusion and warned that “[t]he current fishing mortality rate is high...and may be cause for concern regarding the current stock status of North Pacific albacore.”\(^{12}\) In light of the vulnerable status of these tuna populations, expanding capacity, increasing fishing effort and establishing a high seas shallow set longline fishery off the U.S. West Coast is not consistent with international resolutions, domestic regulations, the best available science and the principles of precautionary management.

**Clarify objectives and consider a broad range of management alternatives.**

As an initial matter, Ocean Conservancy recommends that the Council and NMFS reframe this issue as a broader policy discussion and articulate a more accurate and inclusive “purpose and need” statement. For years, fishermen and fishery managers have expressed a desire to create domestic opportunities to target swordfish and transition the drift gillnet fleet to a more selective and less destructive method of fishing. If, in fact, there is legitimate interest in developing a cleaner and more sustainable swordfish fishery, the Council and NMFS must identify that as an objective and evaluate a wider range of alternatives than simply establishing a limited entry high seas shallow set longline fleet of variable sizes. The purpose and need must, at a minimum, be broad enough to allow consideration of a unreasonable range of alternatives.

In 2004, NMFS imposed a moratorium on pelagic longline fishing east of 150 degrees West longitude to guard against jeopardy to loggerheads even after the Pacific Council banned longlining west of 150 degrees West longitude. Likewise, the Hawaii-based longline fishery was shut down in 2006 after only three months because of excessive turtle interactions. These far reaching closures demonstrate just how vulnerable sea turtles are to the impacts of longline fishing. As such, it would be inappropriate to artificially limit range of alternatives considered to longlining exclusively. Of the action alternatives being presented to the Council, it has been suggested by agency scientists that two (the medium and large size limited entry fleet options), if not all, are patently unreasonable. Such a dramatic increase in capacity and fishing effort is likely to have significant impacts on over-exploited and protected species and run afloat of international overfishing resolutions, the Endangered Species Act, the Marine Mammal Protection Act, the Migratory Bird Treaty Act (MBTA), and the Magnuson-Stevens Act among others. Since both Hawaii and California-based longline fisheries were previously closed due to their adverse impacts on sea turtle populations, it is improper to again call for a renewed longline fishery off the west coast without also evaluating options that would provide more protections for sea turtles and other non-target species. A “reasonable” alternative must also be practicable. The stated goal in establishing a high seas shallow set longline fishery is to create a viable and more selective alternative to drift gillnetting while not increasing overall fishing

\(^9\) 2005 HMS Stock Assessment and Fishery Evaluation Report, Table 5-1, p. 111.
\(^{10}\) Resolution C-06-02, IATTC, June 2006
\(^{11}\) PROP IATTC-73-C1, June 2005
\(^{12}\) 2005 HMS Stock Assessment and Fishery Evaluation Report, Section 5.3.1, page 106.
capacity. It is unclear however how the drift gillnet fleet might transition to longline fleet when, as the PFMC's staff white paper notes, "the size and configuration of drift gillnet vessels makes it unlikely that existing vessels could be fitted for distant water fishing beyond the EEZ."

The Council is charged with developing and refining a range of alternatives for public review and conducting further environmental analysis pursuant to the National Environmental Policy Act (NEPA). The alternatives analysis "is the heart of the environmental impact statement." It "should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public." Moreover, it should "rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated," and "devote substantial treatment to each alternative considered in detail." Should the Council opt to proceed with the development of a management framework, we urge managers to revise the purpose and need statement to more accurately reflect the objective of indentifying more selective fishing strategies to target swordfish. We also recommend that the Council and NMFS broaden the scope of alternatives and not prematurely discount other reasonable options including the potential expansion of a California-based harpoon fishery for swordfish.

Investigate options to expand the California harpoon fishery.
To the extent that fishery managers are interested in transitioning the California drift gillnet fleet to a more selective gear type, we recommend that the Council and NMFS investigate opportunities to expand the California-based harpoon fishery for swordfish. The high value, zero bycatch harpoon fishery has been in existence for nearly a century and may provide a viable and more sustainable alternative to drift gillnets and longlines for targeting swordfish. At its peak in 1978, the harpoon fishery had 309 vessels landing 2,700 metric tons of swordfish. Since then, the harpoon fishery has gradually, albeit not entirely, been replaced by the more efficient yet more destructive drift gillnet fishery. Critics claim that a harpoon fishery could not match the volume of fish yielded by the drift gillnet fleet, however drift gillnet landings of swordfish peaked in 1984 at 2,400 metric tons. What's more, research is underway to improve the efficiency of harpooning by analyzing swordfish movement data to better understand how environmental conditions influence swordfish basking rates and times.

Prioritize development of a coordinated management framework for pelagic fisheries throughout the Pacific.
The conservation community has repeatedly called for more coordinated management between the Western Pacific and Pacific fishery management councils and a comprehensive evaluation of the impacts of all U.S. longlining in the Pacific on imperiled sea turtle populations, yet these essential steps still have not occurred. The Hawaii and California based fleets fish in the same manner, often in the same area, and catch the same turtles. In addition, the fleets consist of many of the same boats as they have historically moved back and forth to avoid the closures to protect sea turtles that have alternated between Hawaii and California in recent years.

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13 40 C.F.R. §1502.14
14 Id.
15 40 C.F.R. §1502.14(a)
16 40 C.F.R. §1502.14(b).
17 Pfleger Institute of Environmental Research (PIER), http://www.pier.org/hm_fishes_swordfish.shtml.
18 2004 Draft BiOp at 90
Scientists warn that, "[t]he critical issue for an individual turtle is the likelihood of capture across an ocean region, not capture by a particular nation. With multiple fleets deployed the cumulative effects of pelagic longlines across fleets in large ocean regions must be taken into account."19

If current fishing practices continue, scientists predict that the extinction of Pacific leatherback sea turtles within the next 10-30 years is imminent.20 Time/area closures and more selective fishing practices can help avert the alarming decline in population of these ancient reptiles, but it will depend on efforts at both the national and international level. The United States has an important leadership role to play in investigating ways to fish more selectively. Towards that end, we recommend that the Pacific Council work closely with fishery managers in the Western Pacific and elsewhere to develop more selective and innovative fishing practices and gear technologies in existing fisheries. To promote sustainability on a global scale, the U.S. must lead by example, by minimizing domestic capacity and developing strong conservation measures that promote ecosystem health and ensure the recovery of endangered sea turtle populations. Even with the most stringent conservation measures in place, reintroduction of longline fishing off the US west coast will result in a net increase in capacity and fishing effort and put vulnerable finfish, marine mammal and turtle populations at even greater risk.

At the same time that the Pacific Council is taking steps to establish a high seas limited entry longline fleet off the west coast, fishery managers in the Western Pacific are considering rolling back critical bycatch mitigation measures in their shallow-set longline fishery. Should both efforts be successful, the likely result would be a overall increase in longline fishing effort Pacific-wide and jeopardy determinations for many species of sea turtles. Any proposed changes to the status quo management regime for longlining off the west coast and in Hawaii, should be well-vetted by both Councils and NMFS before time and resources are expended. Absent better communication and coordination, existing longline fisheries may be subject to even greater constraints and sea turtle recovery efforts may be irreversibly compromised. As such, we recommend that the Pacific Council defer development of a west-coast based longline fishery and initiate a process to develop a joint pelagics management framework with the Western Pacific Fishery Management Council.

**Adopt import restrictions and demand-side strategies to reduce reliance on imported swordfish.**

Proponents of the high seas longline proposal also claim that a west coast based fishery is warranted and necessary to meet the domestic demand for swordfish and reduce our reliance on imported swordfish from countries that may have weaker standards for sustainability and conservation. While these are legitimate concerns, the implied assumption is that demand is static and therefore we must increase supply in order to meet demand. Previous efforts to inform and educate consumers about the ecological impacts of fishery operations have been tremendously successful at influencing demand and paving the way for more effective management strategies. For example, the tuna-dolphin issue is part of the broader public consciousness of American consumers and influences many purchasing decisions. Likewise, a recent campaign to discourage consumers from buying severely depleted Chilean sea bass (Patagonian toothfish) was hugely successful. It is clear that informed consumers can

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20 Nature 405, June 2000
substantially influence the demand side of the equation; therefore a more prudent approach would be to focus agency efforts on educating the public about the relative sustainability and associated impacts of the domestic and international swordfish fisheries.

If the objective in establishing a longline fishery off the west coast is to meet consumer demand while promoting more sustainable management approaches abroad, a better approach would be to monitor and control imports. The U.S. has the authority and the legal responsibility to monitor and control imports from countries whose vessels are fishing in a manner that undermines the conservation of protected species. The recent reauthorization of the Magnuson-Stevens Act (MSA) clarified the intent of Congress to crack down on illegal, unreported or unregulated (IUU) fishing to raise the bar for sustainability. Specifically, the Act requires that NMFS identify fishing vessels engaged in “fishing activities or practices...that result in bycatch of protected living marine resources...”[21] Moreover, the MSA specifically endorses the use of market-related measures such as import prohibitions and landing restrictions to combat IUU fishing.[22] Likewise, the Marine Mammal Protection Act (MMPA) is another statutory tool by which the U.S. can restrict imports of swordfish from countries that do not meet strong conservation standards to minimize the impact of fisheries on marine mammals. Though still pending, the Center for Biological Diversity and Turtle Island Restoration Network recently submitted a petition to ban imports of swordfish from countries failing to submit proof of the effects of fishing technology on marine mammals pursuant to Section 101 of the MMPA. Indeed, if NMFS is sincerely concerned about the impacts that foreign fleets are having on protected resources, limiting or restricting the importation of swordfish caught in an unsustainable manner is a powerful tool that should not be discounted.

It would be irresponsible to re-establish the longline fishery without the necessary conservation safeguards, a thorough environmental impacts analysis, consideration of alternative gear types to target swordfish, and a coordinated management strategy with the WesPac. We do not believe there is sufficient evidence to justify allowing a renewed longline fishery at this time and urge the Council to discontinue development of a management framework for a high seas shallow set longline fishery.

Sincerely,

Meghan Jeans
Pacific Fish Conservation Manager

[21] 16 USC 1826d et seq., Section 610(a)(1)(A)
[22] 16 USC 1826d et seq., Section 608(2)