**Agenda Item E.3.b**
**Supplemental Public Comment PowerPoint 2**
**(Electronic Only)**
**June 2015**

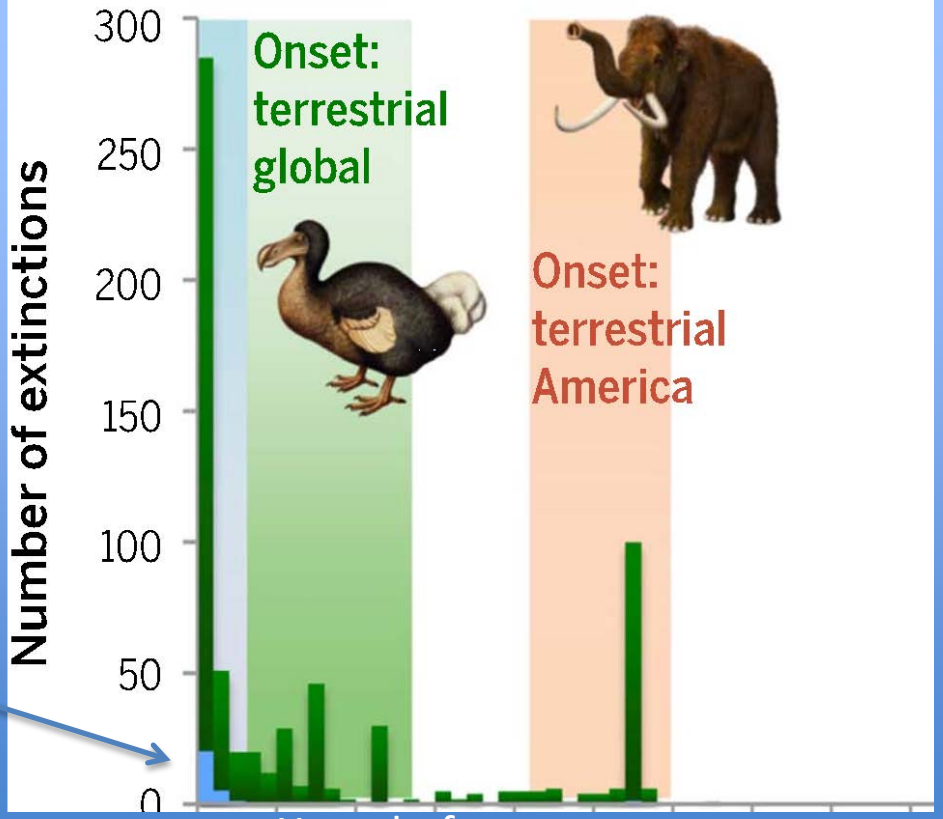
# Time to Transition Away from Drift Gill Nets

Turtle Island Restoration Network

March 11, 2015

# State of the oceans

Marine Extinctions




From McCauley, et al., (2015) *Science* 347:248

TURTLE ISLAND RESTORATION NETWORK
FIGHTING FOR A BLUE-GREEN PLANET

# CA Drift Gillnets are among the 20% worst **worldwide**

| Percentile | 20% | 40% | 60% | 80% | 100% |
|---|---|---|---|---|---|
| Range of discard rates | 0-14% | 14-27% | 27-40% | 41-61% | 62-96% |

Kelleher, K. (2005). *FAO Fisheries Technical Paper. No. 470*

**California Drift Gill Net Fishery discard rate: 64%**

# Fully 20% of the catch is of threatened or rare species

Photo by Jeremy Stafford-Deitsch

# Scientific Community recommends discontinuing the use of drift gillnets

230 scientists, representing

- Ten countries
- over 100 institutions,
- 30 faculty from Stanford University and the University of California

# Drift Gillnets are a Net Drag for U.S. Taxpayers

| Category | Source | Annual Cost |
|---|---|---|
| Admin./Oper. Costs | FMP, Appx H. | $390,205 |
| Science | FMP, amortized | $154,500 |
| Observers | 560 sets, 25% coverage | $105,000 |
| Total Annual Costs | | $649,705 |
| | | |
| 2014 landings | (556 sets) | $510,000 |
| **Net Loss to economy (2014)** | | **-$139,705** |

# Five Reasons why the transfer effect does not happen

Bad Assumptions

1) ONLY IF U.S. sources can't take up supply
2) ONLY IF supply to US is not just diverted from foreign markets
3) ONLY IF Global effort increases
4) ONLY IF Removing DGN gear has a significant impact on global prices
5) ONLY IF Foreign sources have excess capacity

# REGULATORY ENABLING EFFECT DOES HAPPEN

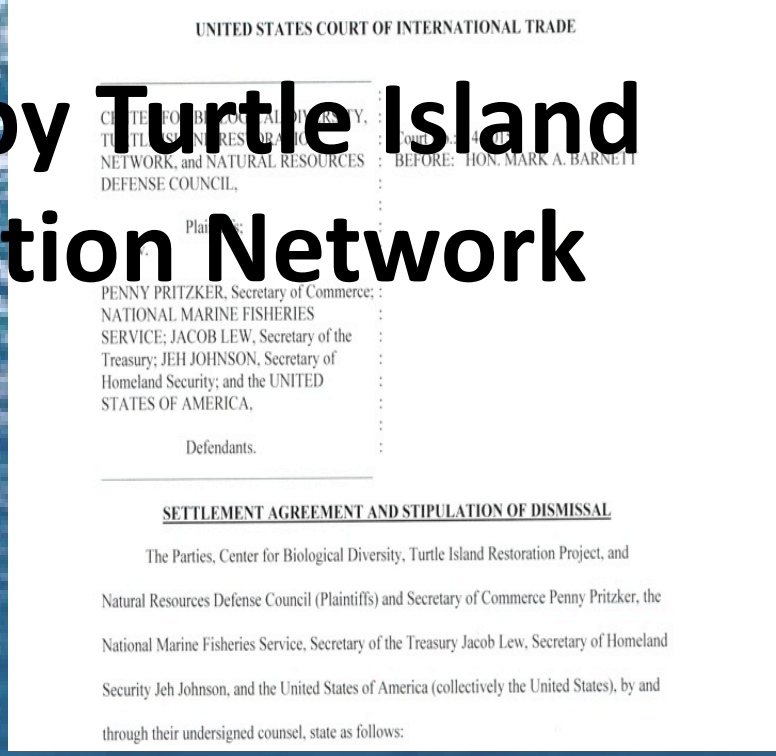
Marine Mammal Protection Act

- Section 101(a)(2) requires bans of fish products caught with methods "which result[] in the incidental kill or incidental serious injury of marine mammals in **excess of United States standards**."

Moratorium Protection Act

- allows action against countries that have not adopted regulations "to end or reduce such bycatch that is **comparable to that of the United States"** 16 U.S.C § 1826k

# Actions by Turtle Island Restoration Network



UNITED STATES COURT OF INTERNATIONAL TRADE

NETWORK, and NATURAL RESOURCES DEFENSE COUNCIL,

Plaintiffs,

PENNY PRITZKER, Secretary of Commerce; NATIONAL MARINE FISHERIES SERVICE; JACOB LEW, Secretary of the Treasury; JEH JOHNSON, Secretary of Homeland Security; and the UNITED STATES OF AMERICA,

Defendants.

BEFORE: HON. MARK A. BARNETT

**SETTLEMENT AGREEMENT AND STIPULATION OF DISMISSAL**

The Parties, Center for Biological Diversity, Turtle Island Restoration Project, and Natural Resources Defense Council (Plaintiffs) and Secretary of Commerce Penny Pritzker, the National Marine Fisheries Service, Secretary of the Treasury Jacob Lew, Secretary of Homeland Security Jeh Johnson, and the United States of America (collectively the United States), by and through their undersigned counsel, state as follows:

January 2015: TIRN and CBD reach settlement with NMFS to create regulations to ban imports under the MMPA

- March 2008: TIRN and CBD Petition to NMFS to demand sanctions against Singapore, Taiwan
  - CA DGN fishery sets “U.S. standards” since the other two swordfish fisheries in the Atlantic and Hawai’I have already banned them.

# Banning DGNs protects U.S. fishermen

- U.S. Government: ban or pressure foreign regulators
- Environmental NGOs: target foreign violators of international standards.

**- Implement CDFW Hard Caps during transition**

**- Develop Transition Plan to mix of gears**

# PFMC has Independent Authority with different standards

- MSA: Councils have independent authority to set fishing levels under National Standard 1
  - "taking into account the protection of marine ecosystems"
  - "reduced by any relevant economic, social, or ecological factor"
    - 16 U.S.C. 1802
  - Allows broad scale consideration of ecosystems
  - Allows consideration of social factor

# NMFS' authority is
* narrower with
* narrower standards

- Endangered Species Act: Responsible to avoid jeopardy to listed species ONLY
  - (see, e.g., TVA v. Hill)
- MMPA: Duty to protect Marine Mammals ONLY
  - Take Reduction Team has a narrow mandates are based on to consider a narrow range of issues

# Fishery Management Councils have broader constitutional role as an independent check and balance

- FMCs play a different constitutional role
  - The principal State official
  - Regional director of the National Marine Fisheries Service
  - State nominees
  - Tribal representative
    - Section 302(b)
- NMFS is a branch of the Federal Executive Branch, ultimately answerable to the U.S. President

# Protecting endangered and rare species for the American people

SOCIAL:

Elected Representatives have demanded grater protection than NMFS is prepared to give under ESA or MMPA

- **17 Members of the House of Representatives**
- **Senators Feinstein, Boxer and Wyden**
- **8 Members of the California Legislature**

# ECOLOGICAL: Independent Review

## Better abundance of sperm whales?

- **NMFS in SAR** "population abundance estimate[s] using a longer time series [] **improve** the precision of abundance estimates"
- **Moore and Barlow (2014):"[**o]ur annual estimates were actually **less precise** than previous estimates…"

# ECOLOGICAL: Independent Review

Accurate Population Growth rates?

- SAR:
  - "[t]here are no published estimates of the growth rate for any sperm whale population (Best 1993)."
  - Uses 4%
- Peer-reviewed literature
  - Moore and Barlow (2014): low growth rates: 0.6% - 0.8%,
  - Whitehead (2002) estimates 1.1% (0.7% to 1.5%)
  - International Whaling Commission: 0.9%

# Time to prepare a transition plan

During the Transition:

- Hardcaps
  - Most protective, simplest should apply
  - Alternative 5: CDFW Preferred alternative
- Performance standards
  - Most protective, simplest should apply
  - Broadest suite of species, including finfish
  - Alt (1/3/5)
- 100% monitoring, with industry funding.

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