September 2, 2015

Ms. Dorothy Lowman, Chair
Pacific Fishery Management Council
70 NE Ambassador Place, Suite 101
Portland, OR 97220

via email: pfmc.comments@noaa.gov

***Re: Agenda Item G.3* - Scoping of Amendment 4 to the FMP: Authorizing a Shallow-Set Longline Fishery Outside of the EEZ**

Dear Chair Lowman and Council Members:

Wild Oceans represents conservation-minded sport fishermen who have long recognized that the future of fishing depends on fishing conservatively and avoiding indiscriminate gears that harm non-target species. We advocate for replacing drift gillnets and longlines with selective gear that contributes to a healthy ecosystem by preventing significant bycatch of non-target fish, sharks, marine mammals, seabirds and sea turtles.

We strongly oppose further consideration of Amendment 4 to the HMS FMP, authorizing a shallow-set longline (SSLL) fishery inside or outside the West Coast exclusive economic zone. Instead, the Pacific Fishery Management Council (Council) should dedicate its limited resources towards researching, authorizing, and subsidizing actively-tended commercial gear that brings prize fish to market while drastically limiting bycatch.

Additional high seas longline effort would increase risk to critically endangered sea turtle populations.

The Pacific leatherback and loggerhead sea turtles are listed as "endangered" under the Endangered Species Act, and scientists caution that the greatest continuing threat to their recovery is incidental capture in fishing gear. In 2004, National Marine Fisheries Service took steps to limit the number of sea turtle interactions with the Hawaii shallow-set longline fleet by requiring large circle hooks and implementing annual hard caps. In 2006, after just three months and 850 sets, the fishery was shut down when it reached

its annual loggerhead take limit. Again in 2011 the fishery was closed, this time for reaching its leatherback turtle cap. A West Coast-based SSLL fishery would exacerbate already existing threats to sea turtles in the Pacific by increasing the number of hooks in the open ocean that can ensnare these endangered species.

A West Coast SSLL fishery would increase bycatch and discards of billfish.

The Scoping Information Document to Authorize the Use of Shallow-Set Longline Gear outside the West Coast Exclusive Economic Zone concludes that "[i]n considering a West Coast SSLL fishery striped marlin may be a factor, because commercial landing of this species is prohibited under the HMS FMP." The Billfish Conservation Act of 2012 extends the longstanding protection of striped marlin to all billfish, including Pacific blue marlin, black marlin, sailfish and spearfish in the continental U.S. The Act affirms that billfish contribute far more to the U.S. economy as recreational species (with virtually all fish released alive) than they do as commercial species. The Hawaii SSLL caught over 8,000 billfish in the past 10 years as unavoidable bycatch while targeting swordfish. Hawaii is permitted to land these fish, but 100 percent of those taken by a West Coast SSLL fishery would have to be discarded, with a large portion already dead.

A West Coast SSLL fishery would increase pressure on overfished finfish and data poor stocks.

We are also very concerned about impacts to other managed HMS, especially overfished species such as bigeye and bluefin tuna that support economically-important fisheries. Fishing effort must be *reduced* on these species in order to halt their decline, yet the proposed SSLL fishery would *increase* effort. A West Coast SSLL fishery would also interact with many species, among them mahi mahi, shortbill spearfish, moonfish and wahoo, for which we lack sufficient data to manage the stocks in a manner that prevents overfishing or achieves rebuilding goals.

We again implore the Council to retract their proposal to authorize a West Coast SSLL fishery. Ultimately, the future of fishing belongs to highly selective gears which avoid vulnerable species such as billfish, bluefin tuna, pelagic sharks, and endangered turtles.

Sincerely,

Theresa Labriola
West Coast Fisheries Project Director

Audubon CALIFORNIA

September 2, 2015

Ms. Dorothy Lowman, Chair
Pacific Fisheries Management Council
1100 NE Ambassador Place, #101
Portland, OR 97220

Mr. William Stelle, Regional Administrator
NOAA Fisheries, West Coast Region
7600 Sand Point Way NE
Seattle, Washington 98115

RE: Agenda Item G.3 – High Seas Shallow-set Pelagic Longline Fishery

Dear Ms. Lowman, Mr. Stelle, and Council Members,

Audubon California opposes the Council authorizing a shallow-set pelagic longline fishery for swordfish outside the west coast EEZ, unless and until mitigation measures are put in place that would virtually eliminate incidental bycatch of albatrosses and other seabirds. Of highest concern is black-footed albatross (*Phoebastria nigripes*). The recovery of this species has stalled and is likely being constrained by adult mortality via longline bycatch throughout its range.[1,2,3,4] Specifically, independent analyses find the existing estimated bycatch of black-footed albatross exceeds thresholds for Potential Biological Removal (PBR). Therefore, we are concerned that additional mortality resulting from additional effort within the range of black-footed albatross will further constrain its recovery.

Background
The total breeding population of the black-footed albatross numbers roughly 67,000 pairs, with 95 percent of the population nesting in the Northwestern Hawaiian Islands. The remaining 5% of the birds nest on several remote islands in Japan. Albatrosses are long-lived seabirds with

[1] Guy, T. et al. 2013. Overlap of North Pacific albatrosses with the U.S. West Coast groundfish and shrimp fisheries. Fisheries Research 147 (2013) 222-234.
[2] Bakker, V., M. Finkelstein, D. Doak, L. Young, E. VanerWerf, and P.Sievert, 2015. The albatross of assessing and managing risk for wide-ranging long-lived species, In Prep.
[3] Veran, S., Gimenez, O., Flint, E., Kendall, W.L., Doherty, P.F., Jr., Lebreton, J.-D., 2007. Quantifying the impact of longline fisheries on adult survival in the black-footed albatross. Journal of Applied Ecology 44, 942-952.
[4] Lebreton, J.-D., Veran, S., 2013. Direct evidence of the impact of longline fishery on mortality in the Black-footed Albatross Phoebastria nigripes. Bird Conservation International 23, 25-35.

deferred maturity, low fecundity and natural high rates of adult survival. These life history characteristics make albatross populations especially vulnerable to small increases in adult mortality. According to the U.S.G.S. Status Assessment of Laysan and Black-footed Albatrosses, North Pacific Ocean, 1923-2005[5] (herein referred to as Arata et al. 2009), "incidental mortality (bycatch) in commercial fisheries is the greatest anthropogenic source of mortality (post-fledging) for both species….the black-footed albatross breeding population currently may be at risk of decline due to fishery bycatch."

A recent definitive study on the overlap of black-footed albatross foraging range with some sectors of the west coast groundfish fleet notes that "low fishing mortality is of conservation concern because fishing mortality is often underestimated and albatrosses are far-ranging and can suffer mortality in many fisheries, resulting in cumulative negative population level impacts."[6]

Other threats to both Laysan and black-footed albatrosses include predation by introduced mammals, reduced reproductive output due to contaminants, nesting habitat loss and degradation due to human development and invasive plant species, and potential loss and degradation of habitat due to climate change and sea-level rise.[7]

Evaluation of fisheries bycatch on Black-footed albatross

Two recent assessments used Population Viability Assessment approaches with Potential Biological Removal to evaluate the risk of fisheries bycatch to black-footed albatrosses. Both show a high sensitivity of the species to small changes in bycatch rate. The Potential Biological Removal (PBR) is an estimate of human caused mortality a population can withstand while recovering towards or maintaining an optimal sustainable population. The PBR approach is mandated for stock assessments under the Marine Mammal Protection Act and has been employed extensively to assess bycatch mortality for sea turtles and well as land and seabirds including albatrosses.[8,9,10]

First, Arata et al. evaluated the status and trends of Laysan and black-footed albatross populations using linear regression, population viability analysis (PVA) and age-structured matrix models. This analysis found that the black-footed albatross population, summed across all three colonies, is stable, or slightly increasing, with a population growth rate of 0.03 percent per year. The report noted the presence of uncertainties in the model and emphasized the importance of continued information to improve the accuracy of future assessments. These uncertainties are reflected in the results, for example the PVA results for the black-footed albatross colony on French Frigate Shoals indicate that this colony has a 50-percent probability of increasing by 74 percent in the next 60 years, but it also has a 35-percent probability of significantly decreasing.

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[5] Arata, J.A., Sievert, P.R., and Naughton, M.B., 2009, Status assessment of Laysan and black-footed albatrosses, North Pacific Ocean, 1923–2005: U.S. Geological Survey Scientific Investigations Report 2009-5131.
[6] Guy, T. et al. 2013. Ibid.
[7] Arata et al. 2009. Ibid.
[8] Zydelis, R., Bellebaum, J., Osterblom, H., Vetemaa, M., Schirmeister, B., Stipniece, A., Dagys, M., van Eerden, M., Garthe, S., 2009. Bycatch in gillnet fisheries - An overlooked threat to waterbird populations. Biological Conservation 142, 1269-1281.
[9] Dillingham, P.W., Fletcher, D., 2011. Potential biological removal of albatrosses and petrels with minimal demographic information. Biological Conservation 144, 1885-1894.
[10] Bakker et al. 2015. Ibid.

In particular, the report noted that "there is no scientific observer program on the International pelagic longline fleet, thus preventing accurate estimates of total bycatch and hampering establishment of mitigation programs."

In addition to uncertainties about the rate of black-footed albatross bycatch in the international fleet, there are substantial uncertainties about the actual rate of bycatch in observed fisheries. Even where there is 100% observer coverage, such as in the U.S.-based longline fleets, bycatch estimates for seabirds are generally considered to be biased low.[11] For example, Arata et al. used a percentage of injured birds (20.9%) as a proxy to estimate birds that were caught but not hauled in. But two recent studies showed higher pre-haul loss rates of 50%[12] and 28% to 34%.[13]

The second assessment by a group of independent scientists re-evaluated the results of Arata et al.,[14] and also used an albatross-specific PBR that is lower than that of Arata et al. 2009.[15] This analysis showed that a) the Arata et al. PBR was exceeded under a higher bycatch scenario, and b) the more conservative, albatross-specific PBR was exceeded under both moderate and higher bycatch scenarios (Figure 1). In this study, the higher bycatch scenario showed a better model fit and thus appears to be closer to the actual bycatch rate. This analysis also showed a slower population-wide mean growth rate of 0.018/year.

Regardless of these differences, both models show high sensitivity to small changes in bycatch rate for black-footed albatross and point to the high importance of ensuring bycatch is held to negligible levels in commercial fisheries.

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[11] Lebreton, J.-D., Veran, S., 2013. Direct evidence of the impact of longline fishery on mortality in the Black-footed Albatross Phoebastria nigripes. Bird Conservation International 23, 25-35.

[12] Brothers, N., A. Duckworth, C. Safina, and E. Gilman. 2010. Seabird Bycatch in Pelagic Longline Fisheries Is Grossly Underestimated when Using Only Haul Data. Volume 5, Issue 8, e12491.

[13] Gilman, E., N. Brothers, D. Kobayashi. 2005. Principles and approaches to abate seabird bycatch in longline fisheries. *Fish and Fisheries* 6(1): 35-49.

[14] Baker et al. 2015. Ibid.

[15] Dillingham, P.W., Fletcher, D. 2011. Ibid.

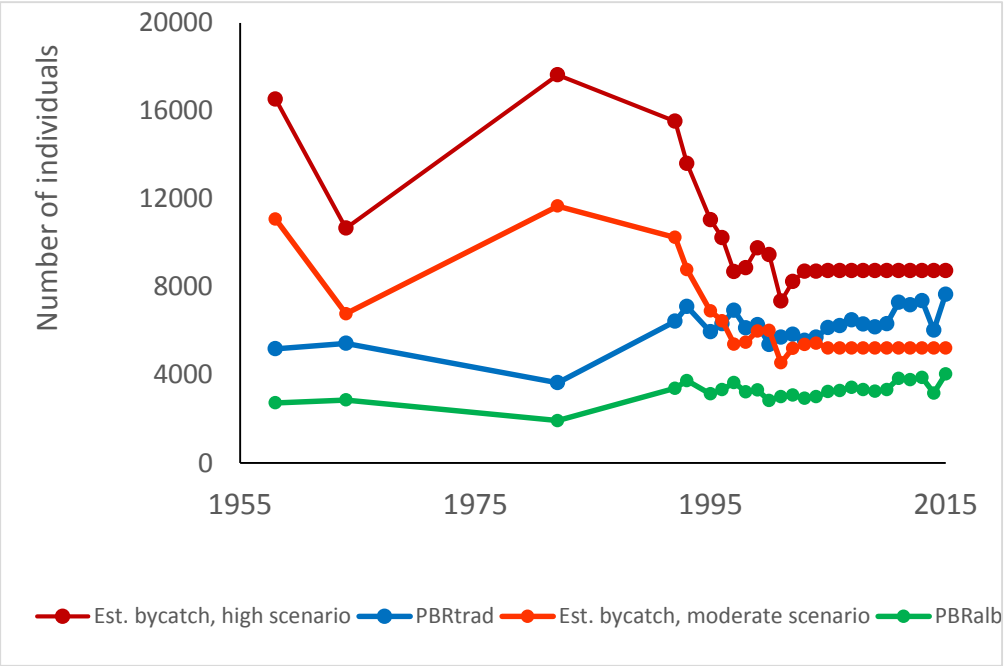


Figure 1. The predicted effects of bycatch of black-footed albatross. (a) Estimated bycatch compared to the Potential Biological Removal rate based on the traditional formula ($PBR_{trad,}$ Wade 1998), and an albatross-specific formula (PBRalb, Dillingham and Fletcher 2011).

Risk to black-footed albatross of a shallow set longline fishery outside to EEZ

Black-footed albatross use the proposed expansion area in both breeding (Figure 2) and nonbreeding (Figure 3) seasons.[16] The area east of 150 degrees west is important foraging area for BFAL, LAAL, and STAL. [17,18]

[16] Agreement on the Conservation of Albatrosses and Petrels. 2015. Species Profiles: Black-footed albatross *(Phoebastria nigripes.)* http://www.acap.aq/en/resources/acap-species2/239-black-footed-albatross/file

[17] Fernandez. P. , D. Anderson1*, P.. Sievert and K. Huyvaert. 2001. Foraging destinations of three low-latitude albatross (*Phoebastria*) species J. Zool., Lond. (2001) 254, 391-404

[18] Finkelstein, M., Keitt, B.S., Croll, D.A., Tershy, B., Jarman, W.M., Rodriguez-Pastor, S., Anderson, D.J., Sievert, P.R., Smith, D.R., 2006. Albatross species demonstrate regional differences in North Pacific marine contamination. Ecological Applications 16, 678-686.

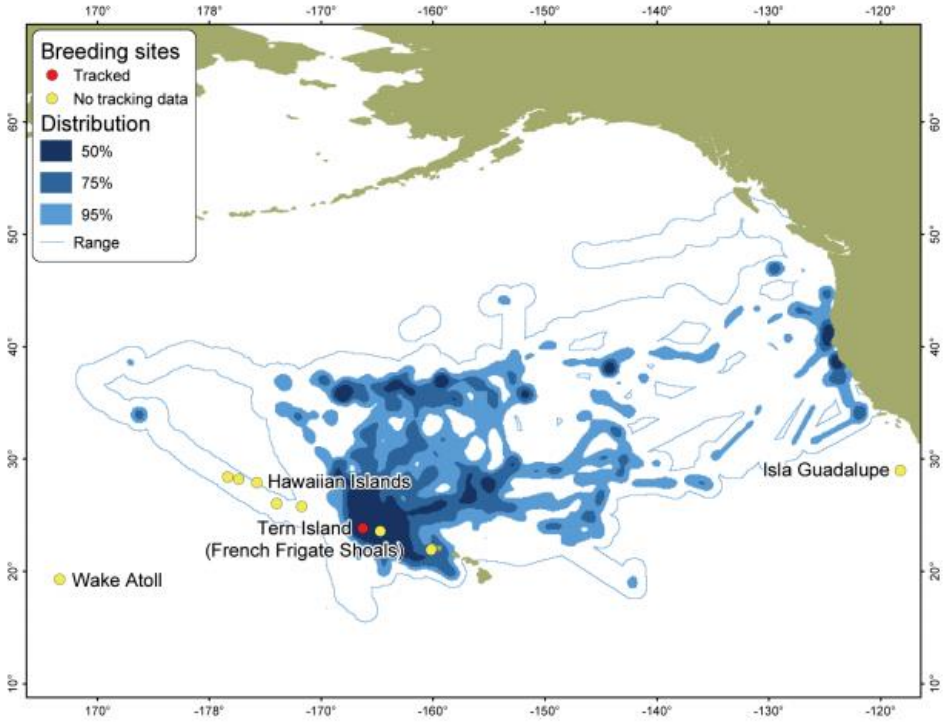


Figure 2. Satellite tracking of breeding adult black-footed albatrosses, fall/winter.

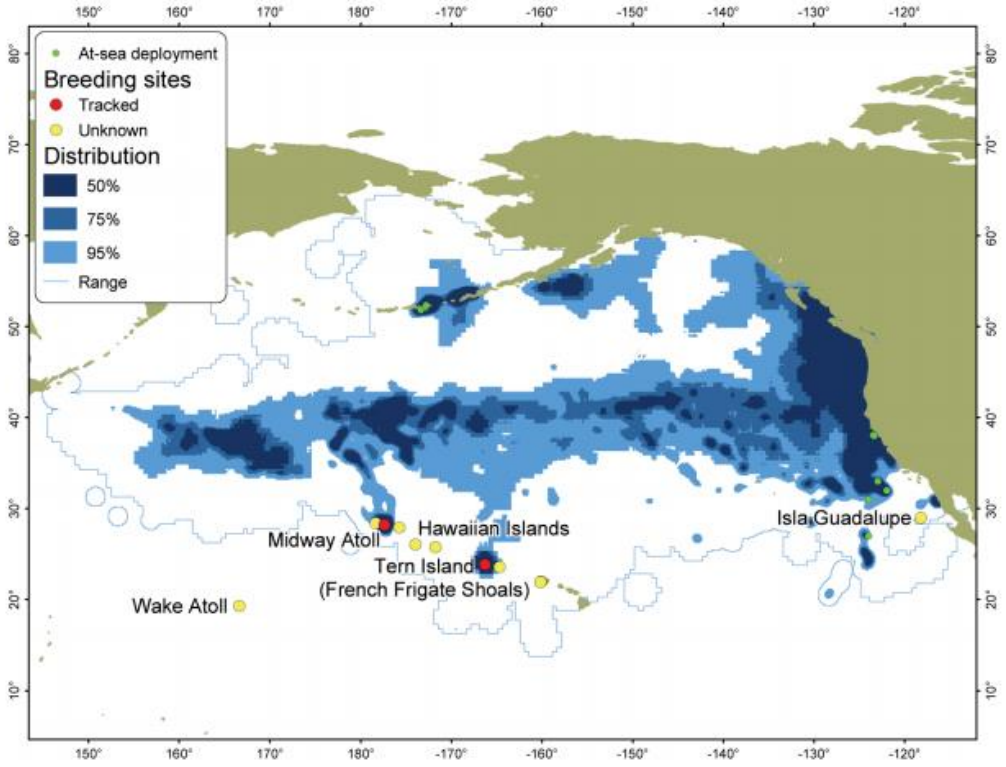


Figure 3. Satellite tracking of non-breeding adult black-footed albatrosses, spring/summer.

According to information in the scoping document, the gear type to be used has in the Hawaii shallow set longline fishery resulted in an average observed take of 20.5 black-footed albatross/year observed mortality over 10 years. This rate has increased about four-fold over the ten years, from about 0.01 interactions/1000 hooks to about 0.042 interactions/1000 hooks, suggesting the more recent interactions are closer to 30 birds/year. In 2014 the Council took action to require mitigation to reduce seabird mortality, specifically black-footed and short-tailed albatrosses, in the west coast groundfish fleet. The Council based this action on a 2002-2009 black-footed albatross bycatch rate of 43 birds/year.[19] Authorizing a new west coast based shallow set longline fishery that has a demonstrated rate of take approaching that of the groundfish fishery, would be inconsistent on the part of NMFS and the Council.

Due to the increasing rate of albatross interactions in the Hawaii-based fleet, we urge NMFS to evaluate current mitigation measures and move to improve best practices and mitigation measures to reverse this trend in the Hawaii-based fleet, and we do not agree with the scoping document that "seabird mitigation measures same as or equivalent to Hawaii regulations (60 CFR 665.35)" would be appropriate in any new authorized west coast based fleet.

We very much appreciate the proactive actions on the part of the Council to protect seabirds over the last several years, including new regulations requiring seabird bycatch mitigation measures in the west coast fleet, protection of the food base through the unmanaged forage species initiative, and 100% observer coverage in many fleets. We respectfully ask that the Council follow a similarly prudent approach here. Thank you for the opportunity to comment.

Sincerely,

Anna Weinstein
Marine Program Director

[19] Guy et al. 2013. Ibid.

September 2, 2015

Ms. Dorothy Lowman, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220

Mr. William W. Stelle, Jr.
Regional Administrator, West Coast Region
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115-0070

RE: Agenda Item G.3 –Scoping, High Seas Shallow-set Pelagic Longline Fishery

Dear Chair Lowman, Mr. Stelle, and Council Members:

Oceana, Center for Biological Diversity, Earthjustice, and the Turtle Island Restoration Network request that you reject proposals for a West Coast-based shallow-set pelagic longline (SSLL) fishery outside of the West Coast EEZ. Creation of a West Coast-based high seas longline fishery is unwarranted given the expected adverse ecological consequences and the numerous legal, policy, and scientific concerns it raises. We remind you that in 2011, when faced with the same decision about whether or not to authorize a new high seas SSLL fishery, the Pacific Fishery Management Council chose to adopt the "no action" alternative precisely for these reasons.[1] Rather than allowing a high seas longline fishery, the National Marine Fisheries Service ("NMFS") and the Pacific Fishery Management Council ("Council") should maintain the current prohibition on shallow-set longline gear east of 150°W longitude, cease further consideration of this action, and instead focus on developing a clean and sustainable West Coast swordfish fishery that uses buoy and harpoon gear, not pelagic longlines or drift gillnets.

Should the Council and NMFS proceed with an analysis for a new U.S. West Coast-based pelagic longline fishery, that analysis must fully comply with the mandates of the National Environmental Policy Act ("NEPA"), the Endangered Species Act ("ESA"), the Migratory Bird Treaty Act, and NMFS's duty under the Magnuson-Stevens Fishery Conservation and Management Act ("MSA") to manage marine resources sustainably, including preventing overfishing and avoiding and minimizing bycatch.

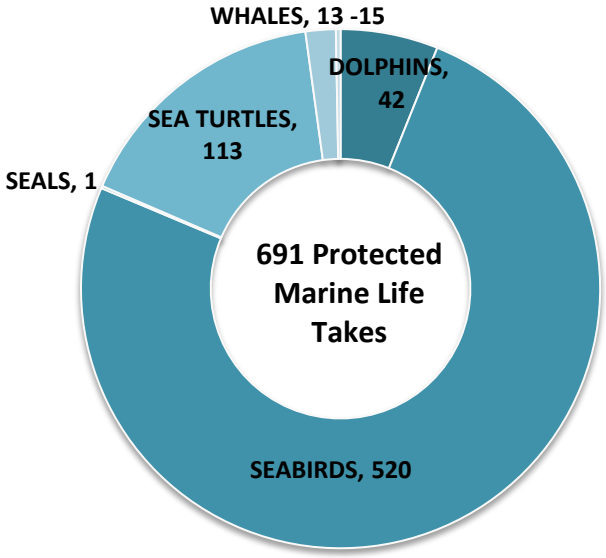
[1] http://www.pcouncil.org/wp-content/uploads/0409decisions.pdf

In light of these obligations and the MSA's requirement to minimize and avoid bycatch, a comprehensive review of bycatch in all West Coast and Hawaii highly migratory species (HMS) fisheries must precede consideration of any new fisheries. Further, in recent years, longline vessels have increasingly landed fish caught seaward of the U.S. West Coast EEZ and east of 150º W longitude on the West Coast. Before scoping an action to permit West Coast longline vessels to fish on the high seas, we recommend that the Council and NMFS investigate the impacts and legality of this practice and consider immediate administrative action to prohibit Hawaii-permitted vessels from landing fish caught seaward of the U.S. West Coast EEZ and east of 150º W longitude on the West Coast.

I. The establishment of a high seas shallow-set longline fishery would threaten numerous species and increase bycatch.

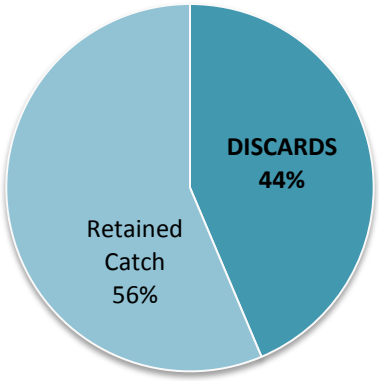
A new West Coast-based high seas SSLL fishery will increase bycatch and take and kill protected marine life. Shallow-set pelagic longlines like those used by the Hawaii-based fleet are used primarily to target swordfish. Based on the Hawaii-based fishery, we know a West Coast-based high seas SSLL fishery would also catch many species of sharks, tunas, marlin, and other fishes as well as seabirds, whales, and dolphins. Shallow-set longlines are made up of a mainline that can measure over 60 miles long. Descending from the mainline are more than 1,000 branch lines, each ending with a baited hook. Even with circle hooks and mackerel-type bait used to decrease sea turtle mortality, the Hawaii-based fishery still caught 691 protected marine animals from 2007 to 2013 (figure 1) and discarded 44% of its catch, including over 138,000 sharks and other fishes (e.g., hammerhead sharks, blue sharks, oceanic white-tip sharks, big-eye thresher sharks, mako sharks, marlin, manta rays, and many others).[2]

Figure 1. Observed Protected Marine Life Takes in the HI SSLL Fishery, 2007-2013



[2] NOAA Fisheries Observer Program. HI SSLL Fishery Observer Data 2007-2013.

Figure 2. Total Catch and Total Discards in the HI SSLL fishery (2007-2013)



A. Increased pelagic longline pressure would threaten endangered sea turtle populations.

Sea turtles throughout the Pacific are hovering on the brink of extinction due in large part to incidental mortality associated with fishing. Two sea turtle populations—western Pacific leatherbacks and North Pacific loggerheads—are especially vulnerable to pelagic longline fisheries in this region. Pacific leatherbacks are classified as endangered throughout their range under the Endangered Species Act (ESA) and "critically endangered" by the World Conservation Union (IUCN). Similarly, Pacific loggerheads are listed as endangered under the ESA and by the IUCN.[3]

Numbering over 100,000 nesting females as recently as the 1980s, Pacific leatherback sea turtles are in rapid decline. For the western Pacific leatherback subpopulation nesting at Jamursba Medi, Indonesia (the primary leatherback turtles migrating to the U.S. West Coast), Tapilatu et al. (2013) reported a 78.3% total decline over the past 27 years (5.5% annual rate of decline).[4] The primary cause of the leatherback decline, and the greatest threat to its continued existence, is entanglement and drowning in commercial fishing gear.[5]

A new IUCN Red List assessment of leatherback sea turtles estimates that as few as 1,438 mature adults remain in the western Pacific population, and the IUCN predicts a 96 percent total population decline by 2040.[6] Further, it names fisheries bycatch as one of the biggest threats to leatherbacks regionally and globally, offering further support for reducing the threat of interactions in U.S. managed fisheries. Continued declines at current rates will jeopardize leatherbacks' existence. Adding an additional mortality risk into their migratory habitat on the high seas is

[3] Marine Turtle Specialist Group 1996. *Caretta caretta*. The IUCN Red List of Threatened Species. Version 2015.2. <www.iucnredlist.org>. Downloaded on 12 August 2015.
[4] Tapilatu, R. F., P. H. Dutton, M. Tiwari, T. Wibbels, H. V. Ferdinandus, W. G. Iwanggin, and B. H. Nugroho. 2013. Long-term decline of the western Pacific leatherback, *Dermochelys coriacea*: a globally important sea turtle population. Ecosphere 4(2):25. http://dx.doi.org/10.1890/ES12-00348.1.
[5] Wallace, B.P., Tiwari, M. & Girondot, M. 2013. *Dermochelys coriacea*. The IUCN Red List of Threatened Species. Version 2015.2. <www.iucnredlist.org>. Downloaded on 12 August 2015.
[6] Tiwari, M., Wallace, B.P. & Girondot, M. 2013. *Dermochelys coriacea (West Pacific Ocean subpopulation)*. The IUCN Red List of Threatened Species. Version 2015.2. <www.iucnredlist.org>. Downloaded on 12 August 2015.

untenable.[7] Simply put, recovery is only possible if we *remove* existing threats and it is likely impossible if we *add* new threats to their survival.

In September 2011, NMFS and the U.S. Fish and Wildlife Service identified the Pacific loggerhead sea turtle as a distinct population and up-listed this population from threatened to endangered status, signifying a substantial worsening of the population status.[8] All North Pacific loggerheads nest in Japan and migrate and feed across the North Pacific, as far south and east as Baja California, Mexico.[9] As described in the 2011 ESA listing decision, Pacific loggerhead sea turtle nesting is a fraction of historical nesting levels. Further, bycatch in commercial fisheries remains one of the greatest threats to the population's recovery. These sea turtles are found in, and pass directly through, the area where a West Coast-based high seas SSLL fishery would operate,[10] and prohibiting the use of SSLL gear is the surest way to eliminate loggerhead sea turtle bycatch. Opening a West Coast-based high seas SSLL fishery is simply not compatible with the recovery of the population.

B. The proposed high seas longline fishery would cause harm to marine mammal and seabird populations.

Many species of protected marine mammals and seabirds occur in the area NMFS now proposes to open to shallow-set longline fishing. These species are known to become entangled in, injured, and killed by pelagic longline gear. Takes of the false killer whale (Hawaii, pelagic) in the Hawaii SSLL fishery already exceed MMPA thresholds due to fishery interactions,[11] and allowing further take of these species is neither scientifically supportable nor legally defensible.

C. Increased pelagic longline fishing effort and capacity threatens vulnerable fish populations.

In addition to potential negative interactions between shallow-set longline gear and endangered sea turtles and marine mammals, we are concerned about the impact of increased fishing effort and capacity on select target and non-target fish species. While swordfish would presumably be the target catch, other more vulnerable highly migratory species are certain to be targeted or caught incidentally. A 2007 draft environmental assessment for the proposed longline fishery within the West Coast EEZ noted that the use of shallow set longline gear off the West Coast may lead to a greater level of interactions with protected shark species, including great white

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[7] *See* Benson, S. R., T. Eguchi, D. G. Foley, K. A. Forney, H. Bailey, C. Hitipeuw, B. P. Samber, R. F. Tapilatu, V. Rei, P. Ramohia, J. Pita, and P. H. Dutton. 2011. Large-scale movements and high-use areas of western Pacific leatherback turtles, *Dermochelys coriacea*. Ecosphere 2(7):art84. doi:10.1890/ES11-00053.1

[8] 76 Fed. Reg. 58,868 (September 22, 2011).

[9] Conant, T.A., P.H. Dutton, T. Eguchi, S.P. Epperly, C.C. Fahy, M.H. Godfrey, S.L. MacPherson, E.E. Possardt, B.A. Schroeder, J.A. Seminoff, M.L. Snover, C.M. Upite, and B.E. Witherington. 2009. Loggerhead sea turtle *(Caretta caretta)* 2009 status review under the U.S. Endangered Species Act. Report of the Loggerhead Biological Review Team to the National Marine Fisheries Service, August 2009. 222 pages.

[10] Polovina, J.J., G.H. Balaza, E.A. Howell, D.M. Parker, M.P. Seki, and P.H. Dutton. 2004. Forage and migration habitat of loggerhead (*Caretta caretta*) and olive ridley (*Lepidochelys olivacea*) sea turtles in the central North Pacific Ocean. Fisheries Oceanography. 13:1, 36-51.

[11] Carretta, J.V. et al. 2014. U.S. Pacific Marine Mammal Draft Stock Assessments: 2014. NOAA-TM-NMFS_SWFSC_XXX. Available at: http://www.nmfs.noaa.gov/pr/sars/

sharks and basking sharks.[12] Electronic tagging of white sharks demonstrates the use of a focal foraging and/or mating area (the white shark 'cafe') in the high seas area where a West Coast-based pelagic longline fishery would be authorized.[13]

In addition, NOAA recently made a positive 90-day finding in response to petitions from the Defenders of Wildlife to list common thresher sharks, smooth hammerhead sharks, and bigeye thresher sharks as threatened or endangered throughout their range, or by distinct population segments, including the eastern Pacific, and NMFS will conduct a status review to determine whether the listings are warranted.[14,15,16] These shark species are taken as bycatch in the Hawaii-based SSLL fishery and would likely be taken by a new West Coast-based SSLL fishery. Characterized by their slow growth, late maturity, and low fecundity, shark species are particularly vulnerable to the impacts of longline fisheries. Even if these candidate species are not listed at this time, adding new threats to these species is likely to force a listing of one or more of these species in the future.

Figure 3. A smooth hammerhead shark killed in the HI SSLL fishery (NOAA, 2007).

Also of concern is the potential impact to Pacific bigeye tuna. The National Marine Fisheries Service stock status summary reports that overfishing is occurring on bigeye tuna and that management action that is required is to reduce fishing mortality.[17] Observer records from the Hawaii-based SSLL fishery show that the fishery caught over 7,800 bigeye tuna between 2007 and 2013, and it follows that a West Coast-based high seas SSLL fishery would also increase bigeye tuna mortality.

II. Expanding the use of shallow-set longline gear in the Pacific would be inconsistent with key environmental laws.

The potential biological impacts of establishing a new high seas shallow-set longline fishery are so severe that the fishery would likely violate numerous federal laws, including the Endangered Species Act, Marine Mammal Protection Act, and Migratory Bird Treaty Act. Engaging in fishing

[12] Draft Longline Exempted Fishing Permit Environmental Assessment, March 2007, p.51.
[13] Jorgensen, S. (2010). Philopatry and migration of pacific white sharks. *Proceedings of the Royal Society*(277): 679-688
[14] 80 Fed Reg. 48,053 (August 11, 2015).
[15] 80 Fed Reg. 48,061 (August 11, 2015).
[16] 80 Fed. Reg. 11,379 (March 03, 2015).
[17] National Marine Fisheries Service - 2nd Quarter 2015 Update Table C. Summary of Stock Status for Non-FSSI Stocks http://www.nmfs.noaa.gov/sfa/fisheries_eco/status_of_fisheries/archive/2015/second/q2_2015_stock_status_tables.pdf (accessed August 14, 2015).

activities absent lawfully issued permits could subject permittees to civil and criminal liability for knowing violations of federal law. Each of these violations is outlined briefly below.

A. Endangered Species Act

Any expansion of shallow-set pelagic longline fishing would likely jeopardize the continued existence of at least two ESA-listed species: Pacific leatherback and loggerhead sea turtles.[18] Section 2(c) of the ESA establishes that it is "…the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act."[19] The ESA defines "conservation" to mean "…the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary."[20] Similarly, Section 7(a)(1) of the ESA directs that the Secretary review "…other programs administered by him and utilize such programs in furtherance of the purposes of the Act."[21] Placing more pressure on leatherback and loggerhead sea turtle populations – particularly when available evidence indicates that pelagic longline bycatch poses a serious threat to their existence – would violate the ESA's statutory directive to conserve listed species. Indeed, if anything, the ESA requires that NMFS do *more* to ensure that species on the brink, such as the Pacific leatherback, not only continue to survive but recover.

Section 7(a)(2) of the ESA requires federal agencies to "insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the adverse modification of habitat of such species . . . determined . . . to be critical . . . ."[22] To accomplish this goal, agencies must consult with the delegated agency of the Secretary of Commerce or Interior whenever their actions "may affect" a listed species.[23] Where, as here, NMFS would be the acting agency and the delegated wildlife agency for purposes of the listed species in question, different branches of NMFS must undertake internal consultation with each other. For species under the jurisdiction of the U.S. Fish and Wildlife Service, such as the endangered short-tailed albatross, NMFS must also consult with that agency.

At the completion of consultation, NMFS issues a Biological Opinion that determines if the agency action is likely to jeopardize the species. If so, the opinion must specify a Reasonable and Prudent Alternative (RPA) that will avoid jeopardy and allow the agency to proceed with the action.[24]

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[18] Pelagic longline fisheries are known to hook, entangle, and kill ESA-listed sea turtles, marine mammals, and seabirds. While our most immediate concerns regarding ESA-listed species are related to the endangered leatherback sea turtle and loggerhead sea turtle, the establishment of the proposed high seas pelagic longline fishery would also compromise the recovery of numerous other listed species, including, but not limited to, green and olive ridley sea turtles, humpback, sperm, sei, fin, and North Pacific right whales, Southern Resident killer whales, Steller sea lions, Guadalupe fur seals, and short-tailed albatross.
[19] 16 U.S.C. § 1531(c)(1).
[20] 16 U.S.C. § 1532(3).
[21] 16 U.S.C. § 1536(a)(1).
[22] 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a).
[23] 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a).
[24] 16 U.S.C. § 1536(b).

Using this consultation process, NMFS concluded in 2004 that permitting pelagic longline fishing east of 150° W longitude would jeopardize the continued existence of the North Pacific loggerhead. NMFS therefore instituted the closure of shallow-set longlining east of 150° W longitude in part to protect loggerheads.[25] Any proposed high seas longline fishery would also threaten the endangered Pacific leatherback sea turtle.

NMFS and the Council have previously acknowledged that a new longline fishery would cause the injury and death of a significant number of Pacific leatherbacks and loggerheads. Estimates in 2008 indicated that a proposed high seas longline fishery could take up to 18 loggerheads and 23 leatherbacks in a single fishing year.[26] These turtles belong to the same population that already suffers injury and death in the Hawaii longline fishery, and they may also be subject to injury and death from shallow-set longline fishing pursuant to a Council approved exempted fishing permit (EFP) and an EFP to allow drift gillnets into the Pacific Leatherback Conservation Area. NMFS has previously determined that fishing in both of these areas poses jeopardy to leatherbacks. In its 2001 biological opinion for the Western Pacific shallow set longline fishery, NMFS concluded that the mortality of up to 57 leatherbacks per year in the Hawaii longline fishery would:

> …appreciably reduce the leatherback sea turtles' likelihood of surviving and recovering in the wild, particularly given the status and trend of leatherback turtle populations in the Pacific basin. Based on published estimates of nesting female abundance, leatherback populations have collapsed or have been declining at all major Pacific basin nesting beaches for the last two decades.[27]

In another relevant biological opinion concerning the impacts of fishing on Pacific leatherbacks, NMFS found that Pacific leatherback populations have continued their worrisome decline and concluded that

> ….*any* additional impacts to the western Pacific leatherback stocks are likely to maintain or exacerbate the decline in these populations. This would further hinder population persistence or attempts at recovery as long as mortalities exceed any possible population growth, which appears to be the current case, appreciably reducing the likelihood that western Pacific leatherback populations will persist. Additional reductions in the likelihood of persistence of western Pacific leatherback stocks are likely to affect the overall persistence of the entire Pacific Ocean leatherback population by reducing genetic diversity and viability, representation of critical life stages, total population abundance, and metapopulation resilience as small sub-populations are extirpated. *These effects would be expected to appreciably reduce the likelihood of both the survival and recovery of the Pacific Ocean population of the leatherback sea turtle*.[28]

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[25] 69 Fed. Reg. 11540 (March 11, 2004); 50 C.F.R. § 223.206(d)(9).
[26] *See* NMFS Draft HMS FMP Amendment 2, Section 4.2 Protected Species, July 30, 2008.
[27] NMFS, Biological Opinion on the Western Pacific shallow set longline fishery 125 (2001).

[28] NMFS, Biological Opinion on CA-OR Drift Gillnet Fishery 94 (2000) (emphasis added).

In the 2013 BiOp on the California Drift Gillnet fishery, NMFS states:

> A compelling factor that must be considered … is the most recent information suggesting that the western Pacific leatherback population appears to be in a continual state of decline, as opposed to possibly stabilizing in recent years, as has been previously suggested (Tapilatu *et al.* 2013). Previous analyses, such as models used in the recent biological opinion on the shallow-set fishery in Hawaii, have been using the same source of nesting data as Tapilatu *et al.* (2013), ***although the interpretation of the nesting trend indicating the decline has only recently come to light. Using the latest assessment, it seems implausible to expect that this population could sustain this decline if it were to continue at similar rates for more than few decades before the threat of extirpation becomes a real possibility.***[29]

Given NMFS's acknowledgment that any additional mortality to Pacific leatherbacks threatens the species' very existence, NMFS and the Council may not permit the establishment of yet another shallow-set longline fishery that will increase the number of leatherbacks and loggerheads harmed or killed. To the contrary, the ESA requires that NMFS do more to save these creatures from the brink of extinction[30] and move them towards recovery.[31]

The establishment of a new high seas pelagic longline fishery would also threaten the short-tailed albatross. Self-reports of seabird interactions with the former California-based longline fishery acknowledged take of 100 albatross of various species. The area in which the West Coast-based SSLL fishery would operate overlaps with short-tailed albatross habitat. It is therefore reasonable to assume that short-tailed albatross are likely to be entangled and killed if pelagic longline fishing is allowed outside the EEZ off the California coast. Given the imperiled status of the short-tailed albatross, we do not believe than any additional take authorization for the species can be lawfully granted.

Finally, the proposed high seas shallow-set longline fishery threatens to harm several species of ESA-listed marine mammals. For example, both sperm whales and humpback whales have been observed entangled in identical fishing gear used by Hawaii-based pelagic longline vessels. Sperm, blue, sei, fin, and humpback whales also occur in this area. As discussed below, take of ESA-listed marine mammals may not occur absent both ESA and MMPA authorization.

B. Marine Mammal Protection Act

If pelagic longline fishing were permitted, it would hook, entangle, and kill marine mammals. Any proposed high seas longline fishery could not proceed unless it operates in a manner

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[29] NMFS, Biological Opinion on the CA Drift Gillnet Fishery 117 (2013) (emphasis added).
[30] The Pacific leatherback sea turtle is one of NOAA's "species in the spotlight" where NOAA is highlighting the importance of preventing extinction and achieving recovery for select ESA-listed species. See: http://www.nmfs.noaa.gov/stories/2015/06/spotlight_pac_leatherback.html
[31] *See, e.g., Nat'l Wildlife Fed'n v. NMFS*, 481 F.3d 1224, 1236-38, (9th Cir. 2007) ("jeopardy" includes impacts to recovery as well as survival and NMFS may not permit further impacts to a species already in jeopardy, regardless of whether the activity at issue is the cause of the baseline jeopardy).

fully consistent with the procedural and substantive mandates of the ESA and MMPA.Take of such species can be authorized via an incidental take statement issued pursuant to Section 7 of the ESA only if such take is also authorized pursuant to Section 101 of the MMPA.[32]

Figure 4. A Risso's dolphin killed in the Hawaii Shallow-set Pelagic longline fishery (NOAA, 2008).

The establishment of a new high seas pelagic longline fishery would violate the unambiguous command of the MMPA that all fisheries "shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate" by April 30, 2001.[33] NMFS has defined the Zero Mortality Rate Goal (ZMRG) by regulation as ten percent of Potential Biological Removal (PBR). The likely take of marine mammal species by any proposed new high seas shallow-set longline fishery would almost certainly exceed this threshold based on the performance characteristics of the Hawaiian SSLL fishery.

The Hawaii-based SSLL fishery is currently listed as a Category II fishery under the MMPA for the take of: Blainville's beaked whale, Hawaii stock, bottlenose dolphin, Hawaii Pelagic, false killer whale, Hawaii Pelagic, humpback whale, Central North Pacific, Kogia *spp.* whale (pygmy or dwarf sperm whale), Hawaii, Risso's dolphin, Hawaii, Short-beaked common dolphin, CA/OR/WA, Short-finned pilot whale, Hawaii, and Striped dolphin, Hawaii.[34]

A large number of marine mammal species occur in the area where a West Coast-based shallow-set longline fishery would operate. Two of the most likely species of marine mammals to be taken by the proposed new fishery are Risso's dolphins and short-finned pilot whales. Pilot whales are the most frequent marine mammal species encountered by the Atlantic longline fishery. There is no reason to believe that they would not also be taken by a similar fishery west of California.

It would be unwise and unlawful to allow an additional fishery that will kill marine mammals to operate without a take reduction team prior to at least initiating the take reduction process for another longline fishery. A Category 2 fishery is, by definition, taking marine mammals at levels above the ZMRG. Because the statutory deadline for reaching ZMRG has already passed,

[32] *See* 16 U.S.C. §§ 1371(a)(5)(E) and 1536(b)(4)(C).
[33] 16 U.S.C. § 1387(b)(1).
[34] 79 Fed. Reg. 77,919 (December 29, 2014) List of Fisheries 2015.

we do not believe that establishing a new fishery that would result in take of marine mammals - where mortality and serious injury are already above ZMRG - is consistent with the ZMRG mandate of the MMPA.

NMFS cannot lawfully authorize new and additional take of marine mammals for which take levels already exceed the PBR and ZMRG thresholds of the MMPA. Rather than establish a new shallow-set longline fishery that will likely result in additional take over lawful levels, NMFS should instead take action using its authority under the MMPA to reduce marine mammal take in existing fisheries.

C. Migratory Bird Treaty Act

Any proposed high seas shallow-set longline fishery would likely violate the Migratory Bird Treaty Act (MBTA). The MBTA provides that "it shall be unlawful at any time, by any means or in any manner," to, among many other prohibited actions, "pursue, hunt, take, capture, [or] kill" any migratory bird included in the terms of the treaties.[35] The term "take" is defined as to "pursue, hunt, shoot, wound, kill, trap, capture, or collect." [36] The primary species taken by pelagic longline fisheries in the North Pacific are albatrosses and fulmars. These are included in the list of migratory birds protected by the MBTA.[37]

The MBTA imposes strict liability for killing migratory birds, without regard to whether the harm was intended. Its scope extends to harm occurring "by any means or in any manner," and is not limited to, for example, poaching.[38] Indeed, the federal government itself has successfully prosecuted under the MBTA's criminal provisions those who have unintentionally killed migratory birds.[39]

The MBTA applies to federal agencies such as NMFS as well as private persons.[40] Following *Glickman*, FWS issued Director's Order No. 131, confirming that it is FWS's position that the MBTA applies equally to federal and non-federal entities, and that "take of migratory birds by Federal agencies is prohibited unless authorized pursuant to regulations promulgated under the MBTA."[41] The MBTA authorizes the Secretary of the Interior to "determine when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow hunting, take, capture, [or] killing . . . of any such bird."[42] FWS may issue a permit allowing the take of migratory birds if consistent with the treaties, statute, and FWS regulations.

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[35] 16 U.S.C. § 703 (emphasis added).
[36] 50 C.F.R. § 10.12 (1997).
[37] *See* 50 C.F.R. § 10.13 (list of protected migratory birds).
[38] *See e.g., U.S. v. Moon Lake Electric Association*, 45 F. Supp. 2d 1070 (1999) and cases cited therein.
[39] *See, e.g., U.S. v. Corbin Farm Service*, 444 F. Supp. 510, 532-534 (E. D. Cal.), *aff'd*, 578 F.2d 259 (9th Cir. 1978); *U.S. v. FMC Corp.*, 572 F.2d 902 (2nd Cir. 1978).
[40] *See Humane Society v. Glickman*, No. 98-1510, 1999 U.S. Dist. LEXIS 19759 (D.D.C. July 6, 1999), *aff'd, Humane Society v. Glickman*, 217 F.3d 882, 885 (D.C. Cir. 2000) ("There is no exemption in § 703 for farmers, or golf course superintendents, or ornithologists, or airport officials, or state officers, or federal agencies.").
[41] *See also* 724 FW § 2.2 (instructing agency employees that the MBTA applies to activities conducted by Federal agencies), *available at* www.fws.gov/policy/724fw2.html.
[42] 16 U.S.C. § 704.

Pelagic longline fishing kills birds protected under the MBTA. As noted above, the former California-based longline fishery reported take of 100 albatross of various species, and observer records from the HI-based shallow set longline fishery corroborate the fact that substantial levels of take occur. Unless such take is permitted under the MBTA, NMFS cannot lawfully allow any fishing, including that which would be authorized by an HMS FMP amendment.

Figure 5. A Laysan Albatross killed in the Hawaii-based Shallow-set Pelagic Longline fishery (NOAA, 2008).

While the short-tailed albatross is ESA-listed and take can be authorized pursuant to that statute, black-footed and Laysan albatrosses are also of concern. While these seabirds nest in the tropical and NW Pacific, they range and feed in the area where this SSLL fishery would operate. Absent a permit under the MBTA authorizing the take of the black-footed albatross and other migratory birds, NMFS and the Council may not institute a new pelagic longline fishery.

Figure 6. A Black-footed albatross killed in the Hawaii-based shallow-set pelagic longline fishery (NOAA, 2013).

III. Any proposed high seas shallow-set longline fishery must clearly define its purpose and need, address a full range of reasonable alternatives, and existing mechanisms to reduce bycatch from international fisheries, and involve a coordinated effort by the Council and WPRFMC.

The expansion of pelagic longline fishing in the Pacific is wholly inconsistent with NMFS's paramount duty to conserve threatened and endangered species as well as protected marine mammals and seabirds. It is also inconsistent with sound management of fisheries resources. Since 2009, when the same proposal was rejected by the Council, the reasons for rejecting this fishery have magnified. It is simply a waste of valuable time and resources to further pursue an ill-founded idea, particularly when there are other avenues to promoting sustainable swordfish fishing that have broad stakeholder support, such as the authorization of deep-set buoy gear to target swordfish off the U.S. West Coast.

However, should the Council and NMFS analyze possibilities for developing such a fishery, it must do so in accordance with sound science and policy, as well as its non-discretionary duties under NEPA and other relevant statutes in addition to those discussed above. In this section, we suggest some measures necessary for a valid analysis of the proposed high seas fishery.

A. Clarify the objectives and consider a broad range of management alternatives.

As an initial matter, we recommend that the Council reframe the issue as a broader policy discussion and articulate an accurate and inclusive "purpose and need" statement. For years, fishermen, managers and the public 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 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 authorizing a high seas shallow set longline fishery. The purpose and need must, at a minimum, be broad enough to allow consideration of a *reasonable* range of alternatives.

In 2004, NMFS imposed a moratorium on pelagic longline fishing east of 150º W longitude to guard against jeopardy to loggerheads. These closures demonstrate just how vulnerable sea turtles are to the impacts of longline fishing, and these populations are now even more vulnerable. As such, it would be inappropriate to artificially limit any range of alternatives considered to longlining exclusively or to definitively conclude that a West Coast-based high seas swordfish fishery, however prosecuted, is appropriate given the potential ecological consequences.

One justification offered by some in the past for the establishment of a high seas shallow-set longline fishery is a need for a more selective alternative to drift gillnets that does not increase overall fishing capacity. It is unclear, however, how the drift gillnet fleet might transition to a longline fleet when, as a 2007 Council staff white paper noted, "the size and configuration of drift gillnet vessels makes it unlikely that existing vessels could be fitted for distant water fishing beyond the EEZ."[43]

[43] PFMC 2007. Implementing a Management Framework for a High Seas Shallow-set Longline Fishery. A PFMC Staff White Paper. Agenda Item F.2.a. Attachment 1. September 2007.

Should the Council proceed with this issue after scoping, despite the strong arguments that pelagic longlines represent a step in the wrong direction, NMFS will be charged with developing and refining a reasonable range of alternatives for public review and conducting the requisite environmental analyses pursuant to NEPA. The alternatives analysis "is the heart of the environmental impact statement."[44] 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."[45] 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,"[46] and "devote substantial treatment to each alternative considered in detail,"[47] Should NMFS and the Council opt to proceed with the development of a management framework, we urge a purpose and need statement that accurately reflects the objective of permitting a swordfish fishery to the extent it does not impermissibly harm other species and results in an overall reduction in bycatch in the West Coast swordfish fishery. We also recommend that the Council and NMFS include a broad scope of alternatives and not prematurely discount other reasonable options including the potential expansion of a California-based harpoon fishery for swordfish or the authorization of buoy gear inside the EEZ as an alternative to drift gillnets or pelagic longlines.

B. Prioritize development of a coordinated management framework for pelagic fisheries throughout the Pacific.

If current fishing practices continue, scientists predict the extinction of Pacific leatherback sea turtles within the next 10-30 years.[48] Time/area closures and more selective fishing practices can help avert the alarming decline in population of these ancient reptiles, but success 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. As such, we recommend that NMFS actively facilitate collaboration and information sharing between the Council, the Western Pacific Regional Fishery Management Council (WPRFMC) and other management bodies 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 U.S. West Coast would result in a net increase in capacity and fishing effort and put vulnerable fish, marine mammal, seabird, and sea turtle populations at even greater risk.

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[44] 40 C.F.R. §1502.14
[45] Id.
[46] 40 C.F.R. §1502.14(a)
[47] 40 C.F.R. §1502.14(b).
[48] Nature 405, June 2000

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

Proponents of the high seas longline fishing in the past claimed 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 the impact of U.S. swordfish imports is a legitimate concern, this hypothetical effect relies on a number of untenable and unsupported assumptions. For example, this rationale is based on an implied assumption 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. Similarly, the campaign to discourage consumers from buying severely depleted Chilean sea bass (Patagonian toothfish) was hugely successful. It is clear that informed consumers can 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 and ban imports failing to meet U.S. standards. 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 MSA specifically evidences Congress's intent to crack down on illegal, unreported or unregulated (IUU) fishing to raise the bar for sustainability. The Act requires that NMFS identify fishing vessels engaged in "fishing activities or practices…that result in bycatch of protected living marine resources..."[49] Moreover the MSA specifically endorses the use of market-related measures such as import prohibitions and landing restrictions to combat IUU fishing.[50] The MMPA also provides tools the U.S. can use to restrict imports of swordfish from countries that do not meet strong conservation standards to minimize the impact of fisheries on marine mammals.

Just recently NMFS issued proposed regulations that would establish conditions for evaluating a foreign harvesting nation's regulatory program for reducing marine mammal incidental mortality and serious injury in fisheries that export fish and fish products to the United States.[51] Under the proposed rule, harvesting nations would have to apply for and receive a comparability finding for each identified fishery in order to import fish and fish products into the United States. Indeed, limiting or restricting the import of swordfish caught in an unsustainable manner is a powerful tool that can and should be employed. Addressing concerns with imports is much better achieved through this mechanism than by authorizing further unsustainable fishing practices by the U.S.

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[49] 16 USC 1826d et seq., Section 610(a)(1)(A)
[50] 16 USC 1826d et seq., Section 608(2)
[51] 80 Fed. Reg. 48,172 (August 11, 2015). Fish and Fish Product Import Provisions of the Marine Mammal Protection Act.

IV. Conclusion

It would be irresponsible to re-establish a high seas longline fishery without necessary conservation safeguards for protected species, a thorough environmental impacts analysis, consideration of alternative gear types to target swordfish, and a coordinated management strategy with the WPRFMC. Indeed, many of the species that would be harmed by such a fishery already suffer unsustainable adverse impacts from existing fishing pressure, and in many cases NMFS has not yet complied with its legal duties to analyze, authorize, or prevent even existing take of those species. The best available science indicates that Pacific leatherbacks, loggerheads, and other species simply cannot sustain the harm wrought by another pelagic longline fishery. We do not believe there is sufficient evidence to justify allowing a high seas longline fishery off the West Coast, nor do we believe that there is evidence that longlines can be or ever have been successfully employed with acceptably low bycatch and environmental impacts.

We urge the Council and NMFS to discontinue the development of a management framework for a West Coast based high seas shallow set longline fishery. Should the process move forward, we recommend the Council and NMFS first investigate the impacts and legality of allowing the Hawaii-permitted SSLL vessels to fish east of 150 longitude and land on the West Coast, and that you consider immediate administrative action to prohibit this.

Sincerely,

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August 28, 2015

Ms. Dorothy Lowman, Chair
Pacific Fishery Management Council
1100 NE Ambassador Place, #101
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RE: Agenda Item G3, Scoping Amendment 4 to the FMP: Authorizing a Shallow-Set Longline outside the U.S. EEZ

Dear Chairman Lowman and Council Members,

Over the last year and a half, the Council has had extensive discussions regarding how to revitalize the West Coast swordfish fishery while minimizing bycatch. The Nature Conservancy (TNC) supports the Council's openness to exploring new gear types and specifically its recent approval of longline and deep-set buoy gear testing within the EEZ.

As the Council now moves to consider authorizing longline fishing outside the EEZ, we urge you to continue to be open to new ways to reduce our reliance on foreign caught swordfish. The U.S. currently imports most of its swordfish from fleets with much higher bycatch rates than those of domestic fisheries. A West Coast based longline fishery can be an opportunity to improve fishing techniques within a strongly managed framework rather than importing from these often unregulated sources.

As you know, there is a fleet of Hawaii permitted vessels fishing just outside the U.S. mainland EEZ and landing back on the West Coast. In fact, most California swordfish landings are actually longline caught fish from the Hawaii fleet. The activity is already ongoing and the question is really about whether effort can be responsibly increased and management improved. There is still considerable learning and analysis to be done as the Council considers this issue further. However, the prospect of increasing a sustainable supply of domestic swordfish via this pathway is worth evaluating fully.

To this end, we encourage the Council to keep a potential shallow-set longline fishery in the scope of the FMP amendments that will be analyzed over the coming year.

Sincerely,

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