

99 Pacific Street, Suite 155C  
Monterey, CA 93940 USA

+831.643.9266  
[OCEANA.ORG](http://OCEANA.ORG)

May 26, 2016

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

**RE: Agenda Item D.5 Deep-Set Buoy Gear and Federal Permit Update**

Dear Chair Lowman and Council Members:

We commend the Pacific Fishery Management Council for taking action in March 2016 to move forward with a Highly Migratory Species Fishery Management Plan (HMS FMP) amendment to authorize deep-set buoy gear (DSBG) to target swordfish. Allowing DSBG is an important step toward addressing long-standing concerns with the continued use of large-mesh swordfish drift gillnets (DGN), particularly the high discard rates and the take of sensitive species. We appreciate that the Council has recommended hard caps on the take of marine mammals and sea turtles and 100% monitoring for the DGN fishery, and we hope that NOAA Fisheries will implement the Council's hard cap recommendations by August.

Our support for DSBG and harpoon gear is based on a comparative analysis of North American fisheries that use different gear types to target swordfish.<sup>1</sup> Our analysis of available data demonstrates DSBG and harpoon gear are the only swordfish gear types that minimize and avoid bycatch.

It is disappointing that the DGN fleet has refused federal funding to develop electronic monitoring;<sup>2</sup> this action sends a clear signal that the fleet is not invested in pursuing efforts to reduce and control bycatch as envisioned by the Council in its recommendations to set bycatch caps in 2016 and move toward 100% monitoring by 2018. The Council should stop its efforts to manage a failed fishing gear type and focus instead on DSBG authorization and management.

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<sup>1</sup> Turner, C., Shester, G., and Enticknap, B. Providing Domestically Caught U.S. West Coast Swordfish: How to Achieve Environmental Sustainability and Economic Profitability. November 4, 2015. Available in November 2015 PFMC Briefing Book, Agenda Item G.2: [http://www.pcouncil.org/wp-content/uploads/2015/11/G2b\\_Sup\\_Public\\_Comment3\\_ELECTRONIC\\_ONLY\\_Nov2015BB.pdf](http://www.pcouncil.org/wp-content/uploads/2015/11/G2b_Sup_Public_Comment3_ELECTRONIC_ONLY_Nov2015BB.pdf)

<sup>2</sup> Letter from Tom Dempsey (The Nature Conservancy) to Chair Lowman, March 3, 2016 "Termination of the planned electronic monitoring project in the HMS swordfish fishery." [http://www.pcouncil.org/wp-content/uploads/2016/03/F2c\\_Sup\\_PubCom3\\_MAR2016BB.pdf](http://www.pcouncil.org/wp-content/uploads/2016/03/F2c_Sup_PubCom3_MAR2016BB.pdf)

As stated in our February 26, 2016 letter to the Council,<sup>3</sup> the authorization and permitting of DSBG provides a unique opportunity to transition away from drift gillnets in a manner that fairly compensates active and latent DGN permit holders, maintains or increases West Coast swordfish landings, provides additional fishing opportunities for new entrants, and minimizes bycatch. To most effectively achieve these objectives, it is critical that any permitting of DSBG be explicitly connected to transitioning DGN permits. Specifically, the initial allocation of DSBG permits should be limited to DGN permit holders and fishermen with active swordfish landings (via harpoon or participation in DSBG experiments).

We support such a permitting program done by the State of California (as is the case with current state-issued DGN permits). Alternatively, at this time we support federalizing the swordfish permits only insofar as the federalization retires all latent DGN permits, includes a time-certain sunset on the use of DGN gear, and provides voluntary options with strong incentives to exchange active DGN permits for DSBG permits in the meantime. Through the PFMC HMS permitting framework, we suggest active DGN permit holders be given the following options and that these options be considered in the range of alternatives:

- Continue to use only DGN gear for the duration of a sunset period, after which the DGN permit is retired.
- Obtain a single DSBG permit that can be used in addition to the DGN permit until the DGN permit sunset period, after which the DGN permit is retired.
- Exchange the DGN permit for a specified number of DSBG permits (greater than one).

We look forward to discussing the specifics of these options during the Council meeting. The Council's authorization of DSBG, as outlined above, may foster a common vision for the future of a sustainable and clean West Coast swordfish fishery and open the door to funding opportunities that will further incentivize this important transition.

Thank you for your work in recent years to develop the U.S. West Coast swordfish fishery into one that is both economically and ecologically sustainable. We look forward to working with you to and accomplish this goal.

Sincerely,



Geoffrey Shester, Ph.D.  
California Campaign Director

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<sup>3</sup> Available at: [http://www.pcouncil.org/wp-content/uploads/2016/03/F3b\\_Sup\\_PubCom2\\_ELECTRONICversion\\_FULL\\_MAR2016BB.pdf](http://www.pcouncil.org/wp-content/uploads/2016/03/F3b_Sup_PubCom2_ELECTRONICversion_FULL_MAR2016BB.pdf)



Dorothy Lowman, Chair  
Pacific Fisheries Management Council  
770 NE Ambassador Place, Suite 101  
Portland, OR 97220

May 26, 2016

Dear Chair Lowman and Councilmembers,

RE: Item Agenda Item D.5 Authorization of deep set buoy gear and federal permit program

Dear Council members,

On behalf of our 90,000 members and the over 1 million Californians who are members of organizations that have supported S.B 1114 and called for a ban on the use of drift gill nets, we urge the Council to reduce bycatch in the California swordfish fishery by 90% or more and eliminate entirely take of vulnerable and endangered marine species. Toward achieving those goals, the Council must first either support efforts to phase out drift gill net gear or develop its own plan to do so, and second the Council must continue its prior work to authorize deep set buoy gear as an appropriate fishing gear. We recognize that the Council has taken strong steps in this direction, and we commend those actions, but unfortunately marine wildlife is still at high risk.

**Only low impact gear should be authorized for use.**

Marine ecosystems are under serious strain and our approach to managing industrial activities in the oceans must keep our responsibilities to protect marine resources for future generations in mind at all times. From the serious declines in numerous marine

species, such as leatherback sea turtles<sup>1</sup>, hammerhead sharks<sup>2</sup> and manta rays<sup>3</sup>, to the depletions of fish populations across the board by 70% or more in California,<sup>4</sup> to the declines in the average sizes of large predators such as swordfish or tuna,<sup>5</sup> we live in an era where business as usual cannot continue. The legacy of past carelessness is that today we no longer have any margin for error.

This means for many species and ecosystems the acceptable level of impacts is essentially zero. For example, the Pacific Leatherback Sea Turtle, one of the most intensively studied of the suite of vulnerable and endangered species in our oceans, has declined to such a degree that we can no longer risk any additional mortality. Recent studies indicate that this population cannot tolerate more than one mortality every six years from all sources if it is to recover,<sup>6</sup> yet we find that derelict gear and other fisheries have entangled two in the last year. Against that backdrop, the best science available shows that the acceptable risk of further mortalities is zero. As commendable as the recently instituted hard caps for leatherbacks are the hard scientific reality is that they are at minimum six times too high, and that is assuming that no other fishery besides the California swordfish fishery kills a leatherback sea turtle. Similar concerns arise with a range of species affected by the California swordfish fishery, from sperm whales to basking sharks.

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<sup>1</sup> Spotila, J. R., R. D. Reina, A. C. Steyermark, P. T. Plotkin, and F. V. Paladino. 2000. Pacific leatherback turtles face extinction. *Nature* 405:529–530.

<sup>2</sup> CITES, Appendices I, II, and III, <http://www.cites.org/eng/app/appendices.php>

<sup>3</sup> See, e.g., E.R. White, M.C. Myers, J.M. Flemming, J.K. Baum, (2015) Shifting elasmobranch community assemblage at Cocos Island – an isolated marine protected area, *Conservation Biology* 29: 1186-97. DOI: 10.1111/cobi.12478.

<sup>4</sup> Koslow JA, Miller EF, McGowan JA (2015) Dramatic declines in coastal and oceanic fish communities off California. *Mar Ecol Prog Ser* 538:221-227

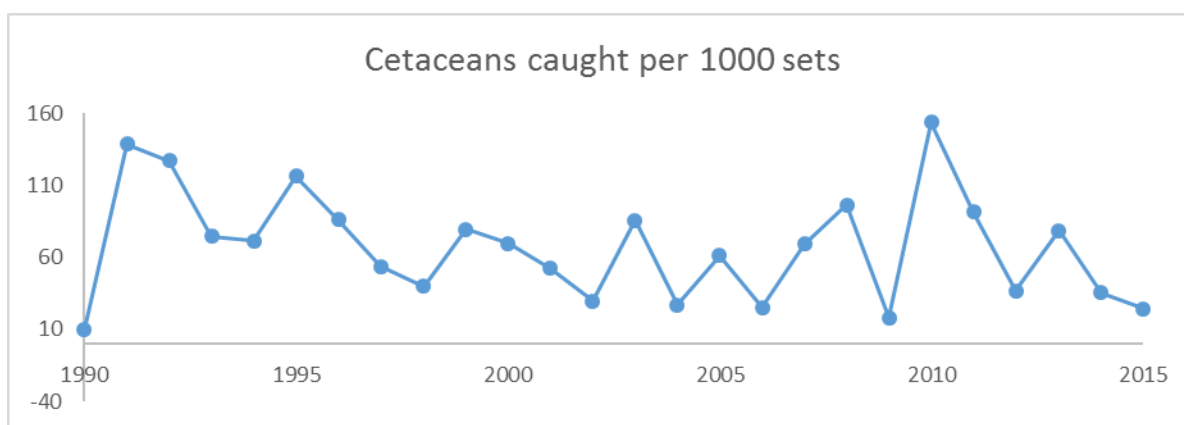
<sup>5</sup> R. Myers and B. Worm (2003) Rapid worldwide depletion of predatory fish communities. *Nature* 423, 280-283

<sup>6</sup> K. Curtis, J. Moore, and S. Benson (2015) Estimating Limit Reference Points for Western Pacific Leatherback Turtles (*Dermochelys coriacea*) in the U.S. West Coast EEZ. *PLoS ONE* 10(9): e0136452. doi:10.1371/journal.pone.0136452

### Transition away from outdated destructive gears

In light of these considerations, we urge the Council to phase out drift gill nets as a fishing gear that cannot meet these standards. As the council is well aware, drift gill nets have a decades-long record of exceptionally high bycatch of a tremendous range of species and a record of damage to vulnerable species.

Furthermore, efforts to clean up the fishery over the last several decades have proven illusory. For example, the strong efforts of the Pacific Offshore Cetacean Take Reduction Team have been touted for implementing a range of measures that should reduce the environmental impacts. Despite these efforts however, the actual cetacean take per effort is largely unchanged, with no significant reduction despite those efforts.



While sea turtle takes have declined from 5-year averages between 5 to 7 takes per 1,000 sets to between 2-4 per 1,000 today, that entire decrease is explained by the decline of the pacific leatherback (and to a lesser degree loggerhead) populations by an even greater amount, leaving the per effort per individual take higher today, if anything.

Overall, the lesson is that the best efforts of a collaborative process of scientists, regulators and fishermen has failed to get the job done. What has driven the reduction in take has been a simple reduction in fishing effort.

Given that the best efforts of the Council, NMFS and the POCTRT have resulted in at most marginal improvements, the inevitable conclusion is that there likely is no way to float a mile-long net through the oceans without unacceptable bycatch and take of protected species. The simple physics of the gear make the task of reducing marine mammal bycatch to zero or overall bycatch by 90% or more essentially impossible.

**Ongoing efforts are no more likely to succeed**

Today, the latest effort to achieve such goals based on dynamic ocean modelling and EFPs to test “new” gear configurations seem no more likely to succeed. Current efforts such as EcoCast are based on spatial models of only a handful of species, in part because geographic data of the rarer species such as sperm whales and leatherbacks simply do not and will not exist because they individuals themselves are too rare to provide such data. Add to this the difficulties of using past data to predict the future when the one thing we know about the oceans of the future is that they will be very different from past conditions, and the effort to develop reliable models of rare species would be essentially impossible.

In fact, dynamic ocean modeling is best suited to fisheries that avoid rarer species entirely while seeking to reduce bycatch of more common species. Current modeling efforts that fail to model leatherback sea turtles are more useful for modeling more common species, such as swordfish, blue shark, or thresher shark. As a result, dynamic oceans modeling approaches seem very well suited to identifying swordfish hotspots for targeted gear such a deep set buoy gear, but particularly poorly suited to eliminating the serious impacts of indiscriminate gear such as drift gill nets.

Furthermore, these efforts seem even less likely to succeed given the track record of opposition to new measures from the fleet. These efforts will require strong participation from the fleet. However, experience shows that past efforts to incorporate new measures have met with resistance, from The Nature Conservancy’s efforts to provide for electronic monitoring, to efforts to institute hard caps, to invitations to discuss a buy-out plan by Sen. Allen. Since use of the dynamic oceans modeling approach also depends on the goodwill and collaboration with the fleet, the past record raises serious questions as to whether any approach that requires participation from the fleet to achieve significant improvements is viable.

**The only scientifically viable future must involve only targeted gear types**

Moving away from drift gillnets as part of the swordfish fishery is the only scientifically well-supported approach, given the state of the oceans and the decades of largely failed efforts to clean up the swordfish fishery.

In part as an effort to move the conversation forward on what such a plan could and should look like Turtle Island Restoration Network developed something close to a compromise package that has formed the basis of S.B. 1114 based on various private conversations with stakeholders where possible. Whether the final vehicle for such a plan is state legislation or a federal plan, a transition is clearly needed.

The Council should consider that such elements should include:

- 1) An end to the use of drift nets (and certainly no expansion or revival of the gear!) Biologically speaking a ban by a date certain is the preferable approach and such an approach would provide regulatory certainty and clarity to the legal provisions. Although the initial approach of S.B. 1114 has been to consider a phase out by attrition that allows existing active fishermen to use the gear until retirement as a reasonable compromise, it is unclear whether such an approach would attract enough support to make it preferable to a ban at a fixed date.
- 2) Linkage to the issuance of deep set buoy gear permits. The development of a west coast extension of the east coast deep set buoy gear fishery provides an exceptional opportunity to provide for an orderly move through the use of incentives and other measures. While the model of S.B. 1114 currently includes such elements, it is unclear whether such measures have support or whether the new fishery should simply open without preferential access for existing swordfish fishermen.
- 3) Development of financial support for fishermen adopting new gear. Although not squarely within the jurisdiction of the Council, the opportunity provided by the development of a targeted deep set buoy gear fishery provides a potential opportunity to leverage private or public funds to assist new entrants.

Currently, S.B. 1114 is the best developed transition concept in the public discussion, although alternative approaches exist. We urge the Council to take up consideration of what a transition plan could and should look like, since without any developed concepts it

is essentially impossible to make a well-reasoned decision on whether to pursue such a plan and in what form

**The Council should engage in the discussion of the future of California's swordfish fishery with other stakeholders**

Our understanding is that efforts to engage the Council and the California delegation in discussion have not yet resulted in such discussions. However, as the sponsors of S.B. 1114, we are mindful of the proper regulatory jurisdiction of the council in setting measures and regulations for regulated fisheries, even if permitting remains with the State of California. While S.B. 1114 largely is silent with respect to such matters, we understand that there are elements that could be amended to make clear that provisions that touch on Council jurisdiction are subject to consistency with Council decisions on such matters. However, clarifying the best approach would require a frank discussion among stakeholders with the Council.

**California should retain authority over the future of its marine resources and fishing communities.**

This Council has seen a great deal of discussion about what constitutes acceptable environmental impacts, and to its great credit this Council has been responsive to social considerations and public opinion that is more protective than the barest legal minimums. However, ultimately, the people of California rightly retain a strong voice in the overall direction of fisheries located entirely within California, which impact California marine resources, and are a critical part of California's economy. Although the Council clearly has the expertise to define the measures and regulations that implement that overall direction, the Council should not be deaf to the people of California or those they have elected to represent them in these matters. Indeed, the California legislature represents the voices of the many who pay taxes to subsidize the California swordfish fishery but get no benefit. These voices are not represented on the Council. The Council has heard from numerous legislators, including both Senators from California and one from Oregon, but it remains unclear whether the Council has adequately weighed the views of the wider public they represent.



We therefore oppose initiating efforts to federalize drift gill net permits as a premature attempt to circumvent the will of the voters, now that the legislature has taken up the issue of the future of California's fisheries and the protection of California's marine resources. This issue concerns almost solely California's resources, economy and communities, so California's particular expertise and perspective should be allowed to shape the discussion and process. Circumventing that process seems to lack justification, especially given the expressed willingness on the part of legislators to respond to and address any concerns of the Council.

In addition, California Department of Fish and Wildlife already has an existing and functioning permit program for the drift gill net fishery, as well as special expertise with California's economies and culture. CDFW has strong institutional ties to other California institutions, from the Ocean Protection Council to California's academic institutions, to foundations statewide, that make it uniquely well placed to manage a fishery in a wider context.

Finally, given CDFW's successful track record, there is little if any compelling reason to incur the great expense and tie up important regulatory resources at NMFS merely to replicate what is already a functioning system. Unless there are compelling changes to the management or approach of the fishery that can only be implemented at a federal level, such a change without more would be a monument to regulatory inefficiency.

Ultimately, it is difficult to justify a position that the people of California should be denied a strong voice in the future of its marine ecosystems. The Council naturally has deep expertise in managing the configurations, seasons, closures, licensees and the like, but the ultimate arbiter of whether the environmental impacts are acceptable are the people of California whose natural resources are threatened by indiscriminate fisheries.

### **Scope of the Permitting of the DSBG fishery**

Lastly, in the spirit of deferring to the technical expertise of the Council, Turtle Island Restoration Network supports efforts to bring alternative, low impact gears online promptly. Turtle Island Restoration Network's core mission is to advocate for the protection of threatened species. We have supported the development of a deep set buoy gear fishery as a measure to reduce the harm to marine wildlife. Thus, we support the

efforts of the Council to develop a new fishery provided those efforts result in a substantial reduction to the threats to wildlife.

Beyond such a performance standard, we have no opposition to the development of alternative configurations and testing in wider areas and different seasons. The potential exists that configurations such as linked gear might take on the unfavorable characteristics of longlines, but whether and to what degree should be determined through the EFP process and other limited scope experiments. Should the data from such trials demonstrate that alternative configurations in fact retain the low bycatch and take characteristics that have been seen to date, then rolling out such innovations in an effort to improve the sustainability of the fishery should run into little opposition and would be encouraged at that time.

Finally, I appreciate the tremendous work of the Council on these issues as but one part of a vast portfolio. We remain open to all dialogue and advice and appreciate your thoughtful consideration.

Best regards and respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Karpa', with a long horizontal flourish extending to the right.

Doug Karpa

Science Policy and Legal Program Director

Turtle Island Restoration Network