THE BILLFISH FOUNDATION
CONSERVATION THROUGH RESEARCH, EDUCATION AND ADVOCACY
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RECEIVED
August 16, 2016

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PFMC

Chuck Tracy, Executive
Pacific Fishery Management Council
7700 NE Ambassador Place
Suite 101
Portland, OR 97220-1384

Transmitted Via Email
PFMC.comments@NOAA.gov

Dear Mr. Tracy,

Thank you for this opportunity to offer The Billfish Foundation's (TBF) comments to the Pacific Fishery Management Council's (PFMC) continuing consideration of testing deep-set buoy gear for swordfish. Assessing the number of buoys each vessel can efficiently monitor and manage is crucial. Excessive number of buoys can result in lost buoys and ghost fishing that indiscriminately kills sea turtles, billfish and other species. Based on feedback from seasoned commercial buoy gear fishermen, ten has been identified as a manageable number. Lost gear also means economic losses.

We continue to support a prohibition on the use of longlines in the west coast Exclusive Economic Zone (EEZ) or beyond. Uncertainty about the status of stocks and the long history of bycatch in longline fisheries in other parts of the world are strong reasons for not allowing this gear into our west coast HMS fisheries.

Sincerely,

Ellen M. Peel
President

OCEANA Protecting the World's Oceans

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September 6, 2016

Herb Pollard, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

RE: Agenda Item J.4: Deep Set Buoy Gear Exempted Fishing Permit Criteria

Dear Chair Pollard:

Research and commercial trials conducted by the Pfleger Institute of Environmental Research (PIER) have clearly shown that deep-set buoy gear in the configuration used in the 2015-2016 Exempted Fishing Permit (EFP) is a profitable method for swordfish fishing off Southern California that minimizes bycatch and bycatch mortality. There is no reason to further delay the authorization and permitting of this gear type, and we ask the Council to immediately resume the Highly Migratory Species (HMS) Fishery Management Plan (FMP) amendment process to accomplish that objective. Any further delay in authorizing this proven gear will be detrimental to ongoing efforts to revitalize the domestic U.S. West Coast swordfish fishery. Authorizing deep set buoy gear in a timely manner is important to markets and fishermen interested in investing in this proven gear type.

With respect to new uses or configurations of deep-set buoy gear that differ from the methods approved in the PIER EFP -- such as linked buoy gear, concurrent use of buoy gear with other fisheries, or the use of the gear in new, untested geographic areas -- we encourage the PFMC to promote and incentivize testing through research and EFPs. The primary purpose of such EFPs would be to test potential modifications to the gear definitions in the initial authorization of the existing configuration. Once new uses or configurations of DSBG are proven through research and EFPs to minimize bycatch to an extent similar to the existing configuration, the Council should consider adding such additional configurations to the permits for deep-set buoy gear.

In summary, we recommend the Council at this meeting initiate two simultaneous, complementary tracks for the future of swordfish deep-set buoy gear:

1. Resume the authorization and permitting of deep-set buoy gear based on the PIER EFP configuration as an allowable gear type in the HMS FMP; and
2. Encourage additional EFPs to test new configurations likely to minimize bycatch such that successful innovations can be added to the allowable configurations for deep-set buoy gear permit holders once proven through EFPs.

Thank you for your commitment toward a profitable West Coast swordfish fishery that minimizes bycatch.

Sincerely,

Geoffrey Shester, Ph.D.
California Campaign Director

THE PEW CHARITABLE TRUSTS

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September 6, 2016

Herb Pollard, Chair
Pacific Fishery Management Council
1100 NE Ambassador Place, #101
Portland, Oregon 97220

**RE: Agenda Item J.4 Deep-set Buoy Gear EFP Criteria to Advance Gear Authorization**

Dear Chair Pollard and Council members:

We write in regards to the authorization of deep-set buoy gear (DSBG) as an allowable gear in the West Coast swordfish fishery. We appreciate the Pacific Fishery Management Council's (Council) continued commitment to reducing bycatch in the West Coast swordfish fishery. To this end, we ask the Council to take the following actions:

- Move forward promptly with DSBG authorization under the Highly Migratory Species (HMS) Fishery Management Plan (FMP);
- Prioritize DSBG authorization in HMS workload planning; and
- Schedule DSBG authorization on the year-at-a-glance calendar with final action in September 2017.

The authorization of DSBG presents a unique occasion where commercial and recreational fisherman, NGOs, scientists and researchers are all in agreement: DSBG shows great promise as an alternative gear in the West Coast swordfish fishery. By taking the above actions, the Council will move toward an economically viable swordfish fishery off the West Coast with minimal bycatch.

The development of DSBG is a model for how fisheries management can work. DSBG was developed by the Pfleger Institute of Environmental Research, a well-respected and established research institution, using data from tagged swordfish to determine the optimal gear configuration. The gear has been tested extensively over the last five years by cooperative fishermen under a high level of observer coverage with consistent catch composition and an average of 95 percent marketable species.[1] In total, DSBG has been tested over 32,000 hook soak hours to date.[2] In 2015, the PIER experimental fishing permit (EFP) had four vessels

[1] March 2016, Agenda Item F.2.a, Supplemental DSBG PowerPoint: PIER-EFP update
[2] Multiple sets are often made on one DSBG trip. From the PIER EFP alone, to date there has been approximately 141 sets using DSBG since it started in 2015. This equates to an approximate soaking of >16,920 hook-hours during

participate using DSBG with a delayed start date of September 1. This small cohort fished on a restricted basis due to limited funds for observer coverage and a target level of participation that would not exceed 50 sets per vessel. From this limited effort, the PIER EFP provided 14 percent of the swordfish landings (caught inside the EEZ) in California.

In November 2015, the Council acknowledged the potential of a West Coast DSBG fishery and signaled its intent to "move forward rapidly" with authorization.[3] In March 2016, the Council unanimously voted on the scope of action for amending the HMS FMP and provided guidance on the development of a range of alternatives for authorizing DSBG.[4] The Council's action in March reflected the thoroughness of the research to date, and the broad-based support for moving forward with DSBG authorization.

However, at its June 2016 meeting the Council voted to develop special conditions for a DSBG EFP program based on a list of key data gaps and research needs. It is unclear what the justification was for such a significant slowdown and what "data gaps" cannot be answered by the current research on DSBG or addressed in the permitting process. We understand the Council's desire to proceed in a deliberate and cautious manner in regards to DSBG authorization. However, it is important to acknowledge the authorization process usually takes at least eighteen months and is generally expected to take closer to two years. The FMP amendment process will provide adequate time to answer any outstanding questions the Council may have regarding data gaps, participation in the fishery or other concerns. All appropriate environmental and social impact statements will also be developed prior to the implementation of a full-fledged fishery and the Council will have ample time to ensure that its concerns are addressed.

The authorization of DSBG should be prioritized above other HMS workload considerations. Authorizing DSBG is consistent with the Draft Swordfish Fishery Management and Monitoring Plan and meets the Council's twin goals of *reducing* bycatch and promoting a West Coast swordfish fishery.[5] Given available information, it is not necessary for the Council to wait for the conclusion of the DSBG EFPs to begin the FMP amendment process. In doing so, the Council can allow a smooth transition from exempted fishing to an authorized fishery. Simply extending the DSBG EFPs beyond the 2016-2017 fishing season will provide little benefit and be very costly to the EFP administrators and participants.

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the EFP. When looked at collectively (EFP + previous research trials) there are an additional >16,000 hook hours on record, all of which have been presented to the Council. Thus, in aggregate, DSBG has had over 32,000 hook soak hours to date.

[3] November 2015 Council Meeting Decision Summary Document, p.3.

[4] March Motion on Agenda Item F.3 Deep-set Buoy Gear Scoping

[5] Pacific Coast Swordfish Fishery Management and Monitoring Plan, September 2015, Agenda Item G.2, p. 4.

DSBG is supported with grant funding by the National Oceanic and Atmospheric Administration's National Marine Fisheries Service Bycatch Reduction Engineering Program, California's Ocean Protection Council and various NGOs. The collaborative nature of this research and the universal support for DSBG is the kind of fisheries management the Magnuson-Stevens Fishery Management and Conservation Act (MSA) envisions for our federal fisheries. Any further delay will likely discourage future innovators looking to minimize bycatch in our fisheries as the administrative responsibility and the burden of proof will be unreasonably high.

It makes little sense to suspend authorization when DSBG is proving effective at selectively catching swordfish while remaining economically viable. DSBG has broad support from fishermen, scientists, seafood suppliers, fishery managers, and the conservation community. We understand the limitations imposed by time and resource constraints and are sympathetic to workload concerns. However, a timeline that results in final action by the Council in September 2017 is a reasonable approach, particularly if the Council and HMSMT adjust their workload to prioritize this authorization as decided at the November2015 Council meeting.

We appreciate your consideration of these comments and look forward to working together to authorize a DSBG fishery on the West Coast.

Sincerely,

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September 6, 2016

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

RE: Agenda Items J.4 Deep-Set Buoy Gear Exempted Fishing Permit Criteria to Advance Gear Authorization, and J.5 Federal Drift Gillnet Permit Amendment

Dear Councilmembers,

This letter is written on behalf of over xxxx members represented by Turtle Island Restoration Network and xxxx. We remain greatly concerned that bycatch in the drift gillnet industry continues to kill endangered and protected species that are of great ecological significance.

We are writing to voice our support for the Pacific Fisheries Management Council to get authorization of deep-set buoy gear for swordfish back on track. Deep-set buoy gear dramatically reduces bycatch and is a more sustainable, yet also economical, option to catch swordfish. We were disappointed by actions taken in June to slow down the process of approving deep-set buoy gear. We strongly encourage the Pacific Fisheries Management Council to change the current, limited approach by working to get a firm calendar in place to fully authorize deep-set buoy gear.

We were also disappointed by the Pacific Fisheries Management Council's move to federalize swordfish permits. The move to federalize the permits appears to be in response to efforts by California citizens, through the California State Legislature, to address the high level of bycatch from this industry. Instead of attempting to limit the voices of Californian citizens, who are concerned about the deaths of thousands of marine mammals and other ocean wildlife, we request the Pacific Fisheries Management Council take action to create a more sustainable swordfish fishery by ending the use of drift gillnets and transitioning to deep-set buoy gear. The only way we could support federalizing the swordfish permits is if the federalization retires all latent drift gillnet permits and includes a sunset of the use of drift gillnets.

Because our oceans are critically important, with ocean health and diversity connected to other aspects of life on the planet, we urge you to take action to end the use of drift gillnets.

Sincerely,

Cassie Burdyshaw
Advocacy & Policy Director
Turtle Island Restoration Network

Heather Hamza, US Coordinator
Ghost Fishing

Kurt Leiber, Executive Director
Ocean Defenders Alliance

Regina Asmutis-Silvia, Executive Director, NA
Whale and Dolphin Conservation

Dan Silver, Executive Director
Endangered Habitats League

Brock Cahill, President
Kurmalliance

Nadine Weil
Heart of Green

***Via electronic mail***

September 6, 2016

Pacific Fisheries Management Council
770 NE Ambassador Place, Suite 101
Portland, OR 97220
pfmc.comments@noaa.gov

RE: Agenda Items J.4 Deep-Set Buoy Gear Exempted Fishing Permit Criteria to Advance Gear Authorization, and J.5 Federal Drift Gillnet Permit Amendment

Dear Council Members:

On behalf of the Center for Biological Diversity (the "Center") and Turtle Island Restoration Network ("TIRN"), this letter raises concerns that entanglements of endangered whales in the California drift gillnet fishery ("Fishery") is both unauthorized and at risk of exceeding the incidental take statement ("ITS") level for humpback whales. The Fishery's authorization to take endangered humpback and sperm whales under the Endangered Species Act ("ESA") and the Marine Mammal Protection Act ("MMPA") expired September 4, 2016.[1] This is particularly worrisome because of the large increase in whale entanglements off the West Coast from 2014 through June 30, 2016, which suggests that the fishery is at a higher risk of entangling humpback whales than was anticipated in the ITS.[2]

Specifically, as of June 30, 2016, 40 whales were reported entangled in fishing gear off the U.S. West Coast, putting this year on pace to break the record for the third straight year. In 2015, there were 62 reports, and these reported entanglements provide only a minimum estimate because many entanglements are not reported. Because of the increased entanglements off of California, it is more important than ever that the fishery removes the "unobserverable vessel exemption," which allows some vessels never to take an observer, and implement 100 percent observer coverage in the fishery.[3] These observers should record not only whales entangled in

[1] *Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit, Notice*, 80 Fed. Reg. 22709 (Apr. 23, 2015).
[2] *See* Revised Incidental Take Statement for the California Thresher Shark/Swordfish Drift Gillnet Fishery – August 21, 2013, Table 12, http://www.pcouncil.org/wp-content/uploads/poctrt_dgn_biop.pdf (anticipating the take of at most two endangered humpback whales in one year).
[3] *See* Pacific Fishery Management Council, *California Large Mesh Drift Gillnet Fishery Management Final Preferred Alternatives*, http://www.pcouncil.org/2015/09/38641/california-large-mesh-drift-gillnet-fishery-management-final-preferred-alternatives/ (recommending achieving 100% monitoring by 2018).

the nets, but also large holes in the gillnet or missing segments that could indicate a "blow-through" of a whale in order to estimate total interactions with whales.

Gillnets were implicated in four entanglements reported in southern California during this time period, and none of the whales were disentangled. For example, on October 17, 2015, a humpback was confirmed entangled in large mesh blue gillnet approximately four miles off Del Mar.[4] The mouth and head were entangled in the mesh netting and the netting was cutting into the rostrum. The mesh appeared to be twine, not monofilament.

Three other humpback whales were reported in southern California wrapped in gillnets for which neither mesh size nor material could be identified. In May 2015, there was an unconfirmed report of a humpback entangled 10 miles west of Channel Islands Harbor, outside of Santa Barbara, in netting and buoys. In September 2015, a humpback whale was confirmed entangled off Ventura, California, six miles south of White Sands, below Mugu Lagoon, with gillnet wrapped around and covering most of its tail and with netting and line trailing 40 feet behind the whale. On October 31, 2015, a juvenile humpback was confirmed entangled around its head and pectoral fin in blue gillnet 4.9 miles outside of Newport Harbor in California.

This week the National Marine Fisheries Service ("NMFS") will finalize the rule listing the humpback whales that feed off California and Oregon as two distinct population segments ("DPSs"), the Central America DPS and the Mexico DPS that are endangered and threatened, respectively.[5] NMFS estimates that there are about 400 Central America humpbacks left, making this a particularly vulnerable population. As a result, this is an especially urgent problem for the California drift gillnet fishery to address.

Thank you for your attention to these matters. Please feel free to contact me with any questions.

Sincerely,

Catherine W. Kilduff
Center for Biological Diversity
ckilduff@biologicaldiversity.org

[4] NMFS, July 8, 2016, 'Copy of Whale Entanglement Spreadsheet for WG 2014-2016-7-8-16.xlsx.'
[5] *Endangered and Threatened Species; Identification of 14 Distinct Population Segments of the Humpback Whale (*Megaptera novaeangliae*) and Revision of Species-wide Listing*, to be published on 9/8/16, *see* http://federalregister.gov/a/2016-21276.