

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

+831.643.9266
OCEANA.ORG

November 8, 2016

Mr. Herb Pollard, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220

Mr. Barry Thom, Regional Administrator
NOAA Fisheries West Coast Region (NMFS)
7600 Sand Point Way NE, Bldg. 1
Seattle, WA 98115

RE: Agenda Item I.5. Swordfish Fishery Management

Dear Chair Pollard, Mr. Thom, and Council members:

We commend actions by the Pacific Fishery Management Council ("Council") and National Marine Fisheries Service ("NOAA Fisheries") to move forward toward a vision of a sustainable U.S. West Coast swordfish fishery that minimizes bycatch. Since the September 2016 Council meeting, NOAA Fisheries has issued a proposed rule to out in place hard caps on bycatch in the drift gillnet (DGN) fishery, implementing the Council's September 2015 final action. We understand that the agency plans to implement the Council recommended 100% monitoring requirements including removing the unobservable vessel exemption by 2018 in a subsequent rulemaking. It is also good to see that the Council has placed the Range of Alternatives for authorizing and permitting a deep-set buoy gear (DSBG) fishery on the agenda for its June 2017 meeting and scheduled final action in September 2017. The Council directed its advisory bodies to develop alternatives for permitting buoy gear and mechanisms to allow DGN permit holders to trade in their DGN permits for buoy gear permits. These steps appear to align with the Council's September 2015 final action on hard caps and monitoring as well as the broader goals articulated in the Council's Swordfish Management and Monitoring Plan. We support the proposed rule and urge the agency to move forward with a rulemaking to require 100% monitoring by 2018 and remove the unobservable vessel exemption as recommended by the Council in its September 2015 motion.

The Council has also requested input on several key questions pertaining to the authorization of DSBG and the potential linkage between DSBG and DGN permits. We offer the following input, consistent with our previous correspondence with the Council:

- The initial permitting of DSBG should be exclusive to those individuals who have developed and pioneered the use of the gear and to DGN permit holders that are willing to trade their DGN permits in exchange for a specified number of DSBG permits. It is critical that the Council establish a permitting system that enables this voluntary trade-in option.

- The Council should authorize and permit the gear initially in the configuration and geographic areas where it has successfully operated under Exempted Fishing Permits.
- DSBG permits should be transferable and limited entry, so their market value can help compensate for the voluntary retiring of DGN gear.
- A phase out of all DGN permits makes sense, and the Council can consider options to achieve this objective.
- The ideal size of a permitted DSBG fleet will depend on a variety of factors and will be informed by further gear testing and data collection. The initial allocation of permits could be accomplished to phase in DSBG permits based on current participation. Further experiments with linked buoy gear hopefully will identify innovations to the existing configuration already tested in Exempted Fishing Permits that enable further increases in domestic swordfish landings.

Prior to transition, the number of DGN permits should be reduced to reflect the number of remaining active DGN fishermen. The Council set a control date in June 2014 as a potential benchmark to define active versus latent permit holders, and the CDFW September Report¹ provides the pertinent data to determine whether each permit holder has made swordfish landings in recent years. The number of permits (74) relative to the number of actual fishery participants creates the potential for resumed latent effort and management uncertainty. Sixteen permit holders made landings in 2015-16. Further, efforts to increase pelagic longline fishing off the U.S. West Coast and allow drift gillnets into the Pacific Leatherback Conservation Area should not be allowed. The California Current Ecosystem is too important and the status of Pacific leatherback sea turtles too dire² to allow this gear. Existing pelagic longline fisheries all have serious bycatch concerns despite decades of costly management efforts. Rather than pelagic longlines, the Council and agency should focus resources on expanding buoy gear as the starting point for a widely supported, expanded domestic swordfish fishery. While there remain concerns about imported swordfish, having strong bycatch standards in our domestic fishery will help level the playing field with foreign fleets.

We thank you for your commitment to transition to a clean swordfish fishery off the U.S. West Coast using a comprehensive approach that includes hard caps on bycatch, incentives to switch to clean methods like deep set buoy gear, and enforcement of bycatch standards of swordfish imports.

Sincerely,



Geoffrey Shester, Ph.D.
California Campaign Director

¹ Supplemental CDFW Report on Federalization of Drift Gillnet Permitting. (See Figure 2a)
http://www.pcouncil.org/wp-content/uploads/2016/10/I5_SitSum_Swordfish_Mgmt_NOV2016BB.pdf

² http://www.nmfs.noaa.gov/stories/2015/05/05_14_15species_in_the_spotlight.html



111 SW Columbia Street, Suite 200
Portland, Oregon 97201
pewtrusts.org

November 8, 2016

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

Re: Agenda Item I.5 – Swordfish Fishery Management

Dear Chair Pollard and Council members:

We write in regards to the federal management of the West Coast swordfish fishery. At its November meeting, the Pacific Fishery Management Council (PFMC) has the opportunity to lay out its vision for the future of the swordfish fishery particularly how we move forward with authorizing deep-set buoy gear (DSBG) and the future of the drift gillnet (DGN) fishery. To this end, we request the Council task its advisory bodies with detailing a transition plan for the DGN fishery that includes authorization of DSBG, permit trade-in provisions, and a sunset on the issuance of DGN permits.

At its September 2015 meeting, the Council directed the Highly Migratory Species Management Team (HMSMT) to continue working on a framework for authorizing DSBG under the HMS Fishery Management Plan (FMP) and approved a range of alternatives for federalizing DGN permits currently issued by the state of California. The California Department of Fish and Wildlife (CDFW) submitted a report during workload planning requesting input on several policy questions related to swordfish management. We offer the following thoughts in response to CDFW's report and to address several concerns raised by the public.

Proposed hard caps. Pew supports the implementation of hard caps, performance metrics and 100 percent monitoring in the DGN fishery as an interim measure. However, we do not agree that the proposed hard caps are the standard the Council should set as an acceptable level of bycatch in our West Coast fisheries. Under the proposed hard cap regime, the DGN fishery would be allowed to kill or injure hundreds of marine mammals and other species.¹ This level of bycatch is unacceptable, particularly when more selective alternatives exist, such as DSBG. The

¹ Proposed Rule, Fisheries Off West Coast States: Highly Migratory Fisheries; California Drift Gillnet Fishery: California/Oregon Large-Mesh Drift Gillnet Fishery; Protected Species Hard Caps, NOAA-NMFS-2016-0123, available at https://www.regulations.gov/document?D=NOAA_FRDOC_0001-4059; Council motion to adopt final preferred alternative for hard caps, September 2015, available at http://www.pcouncil.org/wp-content/uploads/2015/09/G2_CouncilAction_Sept2015_FINAL.pdf.

fact remains, even under the proposed hard caps, fishing with DGN gear is an indiscriminate and wasteful way to fish for swordfish and other highly migratory species.

Latent permits. In light of more selective alternatives for catching swordfish, we recommend the Council sunset the issuance of DGN permits and provide options for members of the fleet to trade in their permit for one or more DSBG permits. We also recommend the Council retire DGN permits that have not been fished in the last five years and make federal DGN permits nontransferable.

Retiring latent permits would promote the Magnuson-Stevens Fishery Conservation and Management Act's bycatch minimization national standard by ensuring that the permits are not used to expand DGN fishing effort in the future. It would also be consistent with National Standard 4, in that retiring latent permits would be fair and equitable, and reasonably calculated to promote conservation. The HMSMT² and CDFW³ have provided the Council with data that is useful in determining appropriate criteria for reducing latent capacity in the DGN fishery such as the annual landings of swordfish and the total number of active and latent permits.

Connection to DSBG. Linking DGN permit retirements with transitioning to more selective gear would further support continued fishing opportunities. Therefore, we recommend the Council consider options for allowing trade-ins of DGN permits for one or more DSBG permits. Alternatives for authorizing DSBG that allowed for active and/or latent DGN permit holders to receive a DSBG permit can be analyzed by the HMSMT and HMS advisory subpanel (HMSAS) to determine the acceptable level of effort in a fully authorized DSBG fishery and how to fairly and equitably allow the opportunity to trade in a DGN permit.

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. DSBG was specifically designed to avoid interactions with protected species, particularly endangered sea turtles, and reduce the likelihood that an interaction with a non-target species would result in mortality. Therefore, we recommend the Council authorize the use of DSBG in the Pacific Leatherback Conservation Area and other areas closed to DGN gear. This allows fishermen to access fishing grounds currently off limits to the DGN fleet, without increasing turtle bycatch. We support the concept offered by the HMSAS for authorizing DSBG in two regions to allow for a limited number of permits in the Southern California Bight to avoid overcrowding and the authorization of additional permits that would only be authorized to fish north of Point Conception.⁴ This could be accomplished through a phased-in approach to permit issuance whereby the number of permits and amount of effort would be analyzed in the Council's biennial specs process and additional permits issued if determined to have minimal effect on the environment.

² See [HMSMT Report, March 2014](#) and [HMSMT Report, September 2016](#).

³ Agenda Item J.5.a, [Supplemental CDFW Report](#), September 2016.

⁴ Agenda Item D.5.a, [Supplemental HMSAS Report](#), June 2016.

In May 2016, Pew and Wild Oceans designed qualifications and terms and conditions for a DSBG fishery in coordination with members of the DGN fleet. Our recommendations for how to permit DSBG were submitted in public comment.⁵ These concepts (appended below for reference) should form the basis of a permitted DSBG fishery.

Conclusion

We appreciate the Council's commitment to reducing bycatch in the West Coast swordfish fishery. For too long, the Council has vacillated on decisions for how to move forward in the DGN fishery. Developing a plan and imposing firm deadlines to end DGN fishing will push innovation and place new emphasis on research and funding of more environmentally sustainable and selective gear. It will also give certainty to fishermen, researchers, and other stakeholders.

We appreciate your consideration of these comments and look forward to working together toward an economically viable swordfish fishery off the West Coast with minimal bycatch.

Sincerely,



Paul Shively
Project Director, U.S. Oceans, Pacific
The Pew Charitable Trusts
pshively@pewtrusts.org



Tara Brock
Senior Associate, U.S. Oceans, Pacific
The Pew Charitable Trusts
tbrock@pewtrusts.org

⁵Agenda Item D.5.b, [Supplemental Public Comment 9](#), June 2016. NB: Reproduced after Wild Oceans letter.



November 8, 2016

Mr. Herb Pollard, Chair
Pacific Fishery Management Council
70 NE Ambassador Place, Suite 101
Portland, OR 97220

via email: pfmtc.comments@noaa.gov

Re: Agenda Item I.5 – Swordfish Fishery Management

Dear Chair Pollard and Council Members:

Thank you providing *Wild Oceans* the opportunity to comment on the permitting of the Pacific fisheries for Highly Migratory Species (HMS). As passionate protectors of marine fish and the open ocean ecosystem, we have long supported the development of “green” gear that catches swordfish with significantly lower levels of bycatch as compared to either drift gillnets or pelagic longlines.

In October, I joined the Pflieger Institute for Environmental Research on their research vessel, Malolo, for a deep-set buoy gear (DSBG) research trip. After spending just a day on the water, and hearing catch reports from cooperating fishermen, it’s apparent that experienced swordfish fishermen will find success catching swordfish with deep-set buoy gear, and those who know how to “read the water” for swordfish will excel at it.

This experience furthered our resolve to encourage the Pacific Fishery Management Council (Council) to adopt DSBG and to grant initial permits to current deep-set buoy gear fishermen and those who have a history in the swordfish fishery, who are going to use the gear, use it correctly, and increase the domestic production of swordfish.

**P.O. Box 258 • WATERFORD, VA 20197 • (703)777-0037
WWW.WILDOCEANS.ORG**

We have pursued full implementation of a deep-set buoy gear fishery because five years of research has demonstrated that it *can* catch swordfish with minimal bycatch. PIER designed the gear to target fish below the thermocline, during the day. Because of this feature, we are confident that fishermen can deploy the gear inside or outside of the Southern California Bight without interfering with finfish or protected species such as turtles that dwell near the ocean surface. Accordingly, we support the Council's renewed commitment to authorize deep-set buoy gear.

In September, after reviewing an HMS Management Team (HMSMT) report on data gaps and research needs with regard to DSBG exempted fishing permits, the Council reaffirmed its support for DSBG as currently configured and fished in the Southern California Bight. For the second time in a year, the Council voted to move forward with authorization of DSBG. We encourage the Council to commit to a schedule that will result in selection of a final preferred alternative by September 2017. To accomplish this, we ask the Council to reassign the HMSMT the task of developing a range of alternatives for the Council's review at the March 2017 meeting.

The Council has asked the HMS Advisory Subpanel (HMSAS) to consider questions related to permitting of the DSBG fishery and its nexus to the drift gillnet fishery. We have advocated for establishing a federal HMS permit with endorsements for each authorized gear type. With this intent, we are resubmitting joint comments made by *Wild Oceans*, The Pew Charitable Trusts and Donald Krebs at the June 2016 meeting (attached)¹ and ask the HMSMT, HMSAS and Council to specifically consider recommendations to federally authorize a DSBG fishery through a phased-in approach with the following elements:

- Experimental Fishing Permit participants should have first priority
- Active drift gillnet and harpoon fleets should have second priority
- Limit the initial issuance of permits to 25-50 in order to prevent overcrowding in the Southern California Bight, allow the market for buoy-caught swordfish to expand, and carefully evaluate potential impacts of the new fishery
- Issue the permits to those who can establish that they are going to use them
- Balance the need for adequate amount of data collection on rare event interactions with controlled implementation that tests the limits on crowding and capacity and in the Southern California Bight
- Allow additional capacity and access after an impact assessment during the biennial specs process determines minimal negative impacts
- Consider trade in of drift gillnet permits for DSBG permits

¹ Agenda Item D.5.b, Supplemental Public Comment 9, June 2016.

- Consider future endorsements for linked buoy gear or other gear for profitability

Thank you for your continued commitment to protect the future of fishing.

Sincerely,

A handwritten signature in dark ink, appearing to read "Theresa Labriola", with a stylized flourish at the end.

Theresa Labriola
West Coast Fisheries Director

June 23, 2016

Agenda Item D.5: Deep-Set Buoy Gear

Dear Chair Lowman and members of the Council:

We are working together to find areas of common ground and agreement on what a deep-set buoy gear (DSBG) fishery should look like. We recommend that the Highly Migratory Species (HMS) Management Team include the following alternatives and considerations for analysis with the intention that they will help the Team establish a viable DSBG fishery. DSBG has the support of scientists, researchers, fishermen, and NGOs as it shows promise to be an effective method for catching swordfish with minimal bycatch.

Phased-in Approach to Permit Issuance

- Experimental Fishing Permit (EFP) participants have first priority
- Active drift gillnet and harpoon fleets have second priority
- Limit the initial issuance of 25-50 permits in order to prevent overcrowding in the southern California bight, allow the market for buoy-caught swordfish to expand, and carefully evaluate potential impacts of the new fishery
- Goal is to issue the permits to those who are going to use them
- Balances the need for adequate amount of data collection and controlled implementation
- Allow additional capacity and access after an impact assessment during the biennial specs process determines that any negative impacts are minimal
- Consider permit trade-ins
- Allow for gear expansion for profitability

Authorized Areas

- DSBG allowed in federal waters (beyond 3 nm) including the Pacific Leatherback Conservation Area (PLCA) and loggerhead conservation areas

Monitoring

- DSBG is selective by design and actively tended by fishermen - monitoring levels should be set at a level consistent with the nature of the gear and the need to produce statistically valid data
- Consider a NMFS pilot program to assess the appropriate level of observer coverage needed for statistically valid data collection

Permit issuance

- DSBG as a federally authorized and permitted HMS fishery
- DSBG permits issued to the vessel, not the captain

Definitions

- Mirroring EFP definitions and gear specifications

- Active tending definition – flexible enough to allow for the simultaneous use of harpoon
- Target species – all marketable HMS species, primarily swordfish
- Prohibited Species – all those currently prohibited under the HMS FMP

We look forward to continued conversations as the authorization process moves forward.


Sincerely,



Donald Krebs
F/V Gold Coast



Tara Brock
The Pew Charitable Trusts



Theresa Labriola
Wild Oceans

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

RE: J5 – Swordfish Fishery Management

November 8, 2016

Dear Chairman Pollard,

Since establishing a clear policy goal for the drift gillnet (DGN) swordfish fishery two years ago¹, the Council has initiated a number of significant policy changes under the HMS FMP. Major regulatory changes, setting bycatch hard caps for nine sensitive species and requiring 100% monitoring, are now in the rulemaking process. Promising new gears like deep set buoy gear (DSBG, and linked gear) are being tested on the water, and a longline EFP (approved by the Council over a year ago) may soon be issued. In September, the Council took another step towards advancing its goals and initiated DGN permit federalization. This would place the DGN fishery entirely under federal management and set up a new and more effective permitting system.

Given the various activities, the sum of which are intended to achieve the Council's overarching policy goal of a viable commercial fishery with improved target performance and minimal bycatch, we encourage the Council to consider setting workload priorities as follows:

Priority 1 - Federalize existing DGN permits

Federalizing the permit will reduce the chances of future legislative actions and streamline management in preparation for the new hard caps and accountability regime. Policy elements to consider:

1. Incorporate existing DGN permit structure/provision into FMP
2. DGN should be a gear endorsement under the federal HMS permit (set up allows for other gear endorsements in the future)
3. Because the DGN sector will be operating under its own hard caps and accountability measures, the number of DGN permits should not impact the number of DSBG permits that will ultimately be issued

Priority 2 - Use the EFP pathway and linked gear research to identify capacity target and other permitting issues related to DSBG and linked gear

¹ <http://www.pcouncil.org/wp-content/uploads/1114decisions.pdf>
11 of 12

The Council previously decided to delay DSBG authorization, choosing instead to expedite DSBG fishing opportunity through the EFP process and use the results to inform a future DSBG regulatory program. This approach will greatly inform capacity considerations, also allows time for linked gear to develop further, for a more informed development of a DSBG/linked gear endorsement.

Policy elements to consider:

1. Identification of a capacity target should be the primary goal of the EFP research.
2. Identifying who is eligible and will get a permit should be a separate, second step. For example, it would be premature to discuss eligibility considerations of EFP participants for a future DSBG endorsement, as this may encourage speculators as opposed to those with genuine interest in prosecuting the fishery
3. Linked gear research progress and the relationship to use of DSBG should be examined

Priority 3 - Issuance of DSBG and/or linked gear endorsements

As stated above, the appropriate number of permits should be set objectively and not be driven by individual or group interests.

Policy elements to consider:

1. Identification of eligibility criteria should happen at a later date (Council has already identified control dates)
2. As stated in above, participation in an EFP or other potential qualifying criteria should not be announced as a to avoid speculation

We recognize these priorities do not occur in isolation from one another, and that there is likely to be some overlap. We commend the Council for acting conservatively yet steadily to bring about the changes needed to get this fishery on its feet again.

Sincerely,



Melissa Mahoney
Manager, Pacific Fisheries Policy
Environmental Defense Fund
mmahoney@edf.org