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WATER, POWER, AND OCEANS – RANKING MEMBER
FEDERAL LANDS

COMMITTEE ON TRANSPORTATION
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Agenda Item J.6.a
Supplemental Congressional Letter

March 2017

March 2, 2017

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

Dear Council Members,

I write in strong opposition to the Pacific Fisheries Management Council (PFMC) taking final action on authorizing the federal drift gillnet permit (Agenda Item J.6 Fishery Management Plan Amendment 5: Final Action Authorizing Federal Drift Gillnet Permit). I am greatly concerned that bycatch in the drift gillnet (DGN) industry continues to kill and injure thousands of endangered species protected by Federal law.¹ These species are also of great ecological significance, and as such continuation of this fishery threatens the integrity of the entire ocean ecosystem. Federalization of permits for this fishery will not alleviate this damage or mitigate this threat.

As you know, federalization would severely limit the ability of the state of California to participate in the management of a fishery that impacts its citizens. In the 1970's, the DGN fishery began in California as a state-managed fishery. While California Department of Fish & Wildlife will still be able to participate in the management of this fishery through the PFMC, its ability to make changes to it will be weakened. Moreover, the California state legislature, which acts as the voice of California citizens, would be cut out entirely from the management process for the DGN fishery.

Unfortunately, it appears that cutting the state out of the management of the fishery is the intent of some advocates of federalization. Significant state participation in managing the state's resources is appropriate and the opportunity for that participation should not be removed. Even if the PFMC decides to support federalization of the fishery, now is not the appropriate time to move forward with federalization. The Trump administration has cast doubts on whether California should be allowed to keep environmental protections that differ from the executive branch's agenda.² Moving forward with this federalization would pre-maturely align the management of this fishery with the executive branch's agenda.

¹ National Oceanic and Atmospheric Administration, California/Oregon Drift Gillnet Fishery Catch Summaries, available at: http://www.westcoast.fisheries.noaa.gov/fisheries/wc_observer_programs/sw_observer_program_info/data_summ_report_sw_observer_fish.html

² Los Angeles Times, California is right to fight trump. His idea of states' rights is clearly limited, available at: <http://www.latimes.com/politics/la-pol-sac-skelton-california-under-donald-trump-20170123-story.html>

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The National Marine Fisheries Service (NMFS) Report on Federal DGN Permitting notes that NMFS does not anticipate significant environmental impacts as a result of federalizing the fishery. Specifically, the NMFS Report states that federalization “is purely an administrative action and is not expected to increase or decrease potential DGN fishing effort.”³ However, although NMFS does not expect an increase or decrease in fishing effort, the action will effectively preclude ongoing state legislative efforts to decrease the DGN fishing effort. Preventing the opportunity for future state action to reduce environmental impact will effectively be an environmental impact of the action to federalize the fishery. This environmental impact is a significant one, and one that should require appropriate analysis under the National Environmental Policy Act.

Furthermore, in the Joint Report between NMFS and CDFW, NMFS indicates that because “the rule would be largely administrative in nature” it anticipates that the action “might be covered under a Categorical Exclusion” and not require further environmental analysis to comply with NEPA.⁴ Reliance on a CE to satisfy NEPA requirements would be wholly inappropriate for this action due to the proposed action involving several Extraordinary Circumstances, including, without limitation, (1) adverse effects from the action on species or habitats protected by the ESA, the MMPA, the MSA, NMSA or the MBTA that are not negligible or discountable; (2) a potential violation of Federal, State or local law or requirements imposed for protection of the environment; and (3) highly controversial environmental effects.⁵

Lastly, the Joint Report between NMFS and CDFW on the Federalization of DGN Permits indicates that a new biological opinion required under Section 7(a)(2) of the ESA for the DGN fishery is currently being prepared and is expected to be completed before a final NMFS decision.⁶ NMFS should delay taking action to consider whether to federalize the limited entry system until after the new biological opinion is complete. The information from the new biological opinion is required to inform the decision of whether and how to federalize the fishery. Further, in the absence of such biological opinion, NMFS’ statement that federalizing the DGN fishery “is not likely to result in any new actions or effects that would affect threatened or endangered species” is unsupported by any environmental analysis and cannot be relied upon by the PFMC in deciding whether or not to support federalization at this time.

³ National Marine Fisheries Service (NMFS) Report on Federal Drift Gillnet (DGN) Permitting (Mar. 2017) at 1.

⁴ Joint Report Between the National Marine Fisheries Service (NMFS) and California Department of Fish and Wildlife (CDFW) on the Federalization of Drift Gillnet (DGN) Permits (Mar. 2017) at 6 – 7.

⁵ See Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities (Dept. of Commerce/NOAA Jan. 13, 2017) at 4 – 5.

⁶ NMFS/CDFW Joint Rept. at 7.

In conclusion, federalizing DGN permits does nothing to address the many concerns with this fishery. Instead, this action will only serve to remove an opportunity for public participation and oversight through the State of California. I request the PFMC withdraw its support for federalization of the drift gillnet fishery for swordfish and to commit to allowing California to maintain a stake in this fishery that impacts the State's natural resources and its citizens.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jared Huffman", with a long horizontal flourish extending to the right.

Jared Huffman
Member of Congress