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May 11, 2017

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 H.3. Authorization of Deep-Set Buoy Gear and Federal Permitting

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

We commend actions by the Pacific Fishery Management Council (Council) and National Marine Fisheries Service (NMFS) to move toward a sustainable U.S. West Coast swordfish fishery that minimizes bycatch. These actions include recommendations for drift gillnet (DGN) hard caps, 100% monitoring of all DGN vessels and trips by 2018, performance objectives on DGN bycatch, and the initiation of authorization and permitting of deep-set buoy gear (DSBG). Last year, NMFS issued a final rule¹ implementing import provisions of the Marine Mammal Protection Act that will require nations exporting fish and fish products to the United States to be held to the same bycatch standards as U.S. commercial fishing operations. In addition to this important step, we urge NMFS to implement the Council's recommendations. Together, these measures will provide incentives to lower bycatch and promote increased domestic swordfish landings off the U.S. West Coast with cleaner gear types.

The authorization and permitting of DSBG provides a unique opportunity to expand swordfish landings while compensating DGN fishermen for voluntarily surrendering their gear and permits. The Council has previously recognized that there are a large number of DGN permits that have not been actively fished, and specifically included the following actions to be taken in its Swordfish Management and Monitoring Plan with the purpose of "limiting fishing effort in the DGN fishery":

Determine the appropriate number of federal limited entry [DGN] permits based on the bycatch reduction goal ... [and]

Consider how a federal limited entry permit could facilitate transitioning DGN fishery participants to other gear types. For example, a limited entry permit could be designed to

¹ 81 Fed. Reg. 54,390 (Aug. 15, 2016).

*include endorsements for more than one gear type or to encourage swapping a DGN permit for a permit for another fishery/gear type. To achieve these goals, it is essential that DSBG permits are limited entry, and that there are clear criteria for issuing the permits that achieve this goal.*²

Given the opportunity to use DSBG permits to provide compensation for relinquishing DGN permits, it is critical that reducing DGN permits be addressed in the purpose and need of this action. 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. The Council set a control date of June 2014 as a potential benchmark to define active versus latent permit holders. As noted in our March 2017 letter to the Council and NMFS, the Council lost an opportunity to address these issues when it declined to consider measures to reduce latent permits and effort during the process of federalizing California state DGN permits. We object to the single rationale provided for doing so — expedition of the process.

Following the scoping of DSBG in March 2016, 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 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.

The Council and NMFS have requested input on the authorization of DSBG and the potential linkage between DSBG and DGN permits. To this end, on April 18, 2017 we submitted to the Highly Migratory Species Management Team and NMFS West Coast Region a proposal for authorizing and permitting DSBG, including a limited entry permitting program enabling DGN permit trade-ins. Based on discussions and feedback, please find a revised version of this proposal as an attachment to this letter. We request the Council include and analyze all elements of this proposal within the range of alternatives for this action, including the purpose and need.

The Magnuson-Stevens Fishery Conservation and Management Act provides the Council and NMFS broad authority to establish a limited access system with respect to any fishery.³ In doing so, the Council and NMFS must consider “present participation in the fishery, . . . historical fishing practices in, and dependence on, the fishery, . . . the economics of the fishery, . . . the capability of fishing vessels used in the fishery to engage in other fisheries, . . . the cultural and social framework relevant to the fishery and any affected fishing communities, and . . . any other relevant considerations.”⁴

Limited entry is a common fishery management tool that will benefit fishery economics, prevent gear conflicts, and promote conservation. The alternative to a limited entry fishery is “open access.” It is widely recognized, based on past fisheries management experiences in the U.S. and

² PFMC 2015. Pacific Coast Swordfish Fishery Management and Monitoring Plan. September 2015 Draft. Agenda Item G.2. http://www.pcouncil.org/wp-content/uploads/2015/08/G2_Att1_SwordfishPlan1509_SEPT2015BB.pdf

³ 16 U.S.C. § 1853(b)(6) (“Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may . . . establish a limited access system for the fishery in order to achieve optimum yield”). A limited access system is “a system that limits participation in a fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulation.” 50 C.F.R. § 600.10.

⁴ *Id.* § 1853(b)(A)-(F).

around the world, that open access fisheries can result in a number of management concerns including fishery conflicts, collapse, and depletion, with harmful conservation and economic results. As you know, it is important to implement a limited entry program before these conservation and management problems arise.

Thank you for your commitment to transition to a clean U.S. West Coast swordfish fishery using a comprehensive approach that includes hard caps and 100% monitoring to control bycatch, incentives to switch to clean methods like deep-set buoy gear, and bycatch standards for swordfish imports.

Sincerely,

A handwritten signature in cursive script, appearing to read "Geoff Shester".

Geoffrey Shester, Ph.D.
California Campaign Director and Senior Scientist

Attachment: Oceana proposed elements for deep-set buoy gear authorization and limited entry permit program

Attachment: Oceana proposed elements for deep-set buoy gear authorization and limited entry permit program, May 11, 2017

Purpose and Need:

- Increase domestic swordfish landings and reduce bycatch.
- Authorize deep-set buoy gear (DSBG) and establish a federal limited entry DSBG program.
- Provide incentives to transition from drift gillnet (DGN) gear to DSBG.
- Provide compensation for DGN permit holders who voluntarily retire their permits.

Management measures:

- Gear definition: Base initial definition, configuration and tending requirements on PIER exempted fishing permit (EFP) from 2015-16,* including a maximum of 10 buoys per vessel with a maximum of 3 circle hooks per buoy, active tending and service of gear (e.g., 3 nautical mile maximum distance from any gear, gear tags for each buoy), set during the day, all hooks set below thermocline to target swordfish at depth. The fishery management plan (FMP) should have a clear mechanism to amend the definition to include linked buoy gear in the future under the same permits, contingent on future EFP results.
- One DSBG permit per vessel (single vessel can't fish more than 10 buoys).
- Permit holder may not use both DSBG and DGN permit on the same trip.
- Area allowed: Federal waters only (to avoid bottom contact and/or gear conflicts), use of DSBG in Pacific Leatherback and Pacific Loggerhead Conservation Areas would be allowed.
- Observer coverage, as determined by National Marine Fisheries Service and subject to review.
- Maintain list of prohibited species in Highly Migratory Species FMP, which would apply to DSBG.

Permitting:

- DSBG permits are strictly limited entry.
- Permits granted under 1, below, are immediately transferable. Permits granted under 2, below, are transferable after three years, and should include a minimum annual swordfish landings requirement to ensure they are actively fished.
- Qualification criteria for one DSBG permit:
 1. Possess a California or federal DGN permit, and surrender that permit and dispose of DGN gear; or
 2. Have made commercial swordfish landings under an HMS permit or EFP in the last five years with DGN, harpoon, or DSBG (EFP).
 3. If DSBG applicant qualifies under both 1 and 2 above, then he or she is eligible for two DSBG permits.

Management review following two years of DSBG authorization:

- Review and amend gear definition to consider linked buoy gear (based on EFP results), such that the use of linked buoy gear is limited to DSBG permit holders. If linked buoy gear is authorized, only DSBG permit holders would be allowed to fish it.
- Review observer coverage levels and bycatch data
 - Determine whether observer coverage levels should be modified based on pilot program results.
 - Assess whether bycatch concerns require management measures.

* Available at: http://www.pcouncil.org/wp-content/uploads/H3a_Att2_PIER_MAR2015BB.pdf