

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

+831.643.9266
OCEANA.ORG

May 30, 2018

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

RE: Agenda Items G.3. Drift Gillnet Performance Metrics; and G.7 Swordfish Management Project Planning and Observer Coverage

Dear Chair Anderson and Council members:

We appreciate efforts made by the Pacific Fishery Management Council (Council) to move toward a sustainable U.S. West Coast swordfish fishery that minimizes bycatch. These efforts include recommendations to the National Marine Fisheries Service (NMFS) for drift gillnet (DGN) bycatch hard caps, 100% monitoring of all DGN vessels and trips by 2018, making sperm whale emergency regulations permanent¹, plus Council action to establish DGN performance objectives on marine mammal and finfish bycatch and the initiation of authorization and permitting of deep-set buoy gear (DSBG). Unfortunately, NMFS chose not to implement the Council's recommendations made in 2015 for hard caps and increased monitoring, or to make permanent the emergency rules to protect sperm whales, effectively rejecting the Council's efforts to achieve its swordfish fishery management and bycatch reduction goals.

Each year the DGN swordfish fishery continues to take, injure and kill large numbers of marine mammals, rare fish species and other marine life in pursuit of swordfish. Given that the persistent problems associated with DGN swordfish bycatch, management, and monitoring are intricately linked, we are submitting this letter for both DGN agenda items before the Council. Here we describe the ongoing issues facing DGN management and monitoring, and recommend the Council transition the West Coast swordfish fishery from unselective DGN gear to DSBG. During the transition, we recommend the Council and NMFS require 100 percent monitoring, as already recommended by the Council, and implement management measures to reduce and control DGN bycatch. We recommend the Council cease efforts to allow DGN gear in the Pacific Leatherback Conservation Area and cease efforts to authorize pelagic longline gear.

Drift gillnet performance metrics exceeded

The DGN swordfish fishery has exceeded bycatch performance standards for the last two consecutive years. This indicates the fishery is increasing bycatch of certain species relative to the baseline period from which these metrics were set. Therefore, the Council should consider and adopt additional measures to reduce bycatch in this fishery.

¹ Recommended by the Pacific Offshore Cetacean Take Reduction Team and supported by the PFMC in March 2014 when recommending temporary emergency rules be extended while permanent recommendations were implemented by NMFS. See: <http://www.pcouncil.org/wp-content/uploads/0314decisions.pdf> at 4.

In 2015, the Council adopted performance standards to track whether any single year estimates of bycatch in the DGN fishery exceed ten-year maximum levels over the baseline period of 2004-2014. The intent was to prevent increases in bycatch relative to this period, by enacting additional management measures if the ten-year maximum is exceeded for any species in a single year. The trigger for Council consideration of additional management measures to reduce bycatch is if the estimate "...reaches the performance metric for any species in a single fishing season."²

Aside from hard caps and increased monitoring, the Council's 2015 Swordfish Management and Monitoring Plan identifies DGN bycatch performance standards as a means to reduce bycatch. The plan states, "If performance standards are not met the Council may recommend additional management measures, as appropriate."³

The DGN fishery has failed to achieve the performance standards established by the Council in both seasons since the standards were adopted.

- In the 2016-17 season, the DGN fishery exceeded the performance metric for Northern right whale dolphins by over two-fold (performance metric = 11; 2016-17 fishing season results = 26.8).⁴
- In the 2017-18 season, the DGN fishery exceeded the performance metric for Northern elephant seals by over two-fold (performance metric = 6; 2017-18 fishing season results = 16.3); gray whales (performance metric = 5; 2017-18 fishing season results = 5.4) and hammerhead sharks by over five-fold (performance metric = 4; 2017-18 fishing season results = 21.7).

In response to exceedance of the hammerhead shark performance metric, the HMSMT has suggested the Council reconsider the performance metric and reclassify it as scalloped hammerhead sharks.⁵ The grouped performance metric for all hammerhead sharks was established based on the inclusion of all three species of hammerhead sharks historically caught in the DGN swordfish fishery (smooth, scalloped, and great hammerhead sharks) which were all listed in 2014 under the Convention on the International Trade in Endangered Species (CITES), Appendix II, which is an international recognition that these sharks are highly vulnerable to overfishing, threatened, or endangered.⁶ Rather than amend the performance metric, the Council should establish management measures that will reduce the likelihood that performance metrics will be exceeded in the future.

Phase out DGN gear

Given the DGN swordfish fishery is not achieving bycatch performance standards established by the Council, the widespread public support for a full transition away from DGN to clean gears, state and

² NMFS 2015. Preliminary Analysis of Options for Council Bycatch Performance Metrics for the US West Coast Large-Mesh Drift Gillnet Fishery. Alternative 4 (Council FPA). http://www.pcouncil.org/wp-content/uploads/2015/08/G2a_NMFS_Rpt1_DGN_draftEA_and_metrics_SEPT2015BB.pdf

³ PFMC. 2015. Pacific Coast Swordfish Fishery Management and Monitoring Plan. September 2015. https://www.pcouncil.org/wp-content/uploads/2018/05/G7_Att1_Swordfish-Plan_fromSept2015BB_Jun2018BB.pdf

⁴ PFMC 2017. HMSMT Report on Performance Metrics for the 2016-17 Drift Gillnet Fishery. http://www.pcouncil.org/wp-content/uploads/2017/06/H1c_Sup_HMSMT_Rpt_PerformanceMetrics_Jun2017BB.pdf

⁵ PFMC 2018. HMSMT Report on Performance Metrics for the 2017-18 Drift Gillnet Fishery. https://www.pcouncil.org/wp-content/uploads/2018/05/G3a_HMSMT_Rpt1-DGN_Performance_Metrics_JUN2018BB.pdf

⁶ https://www.cites.org/eng/prog/shark/other_sharks.php

federal legislation to phase out DGN gear, and the reluctance of NMFS and the fleet to implement 100% monitoring and hard caps as directed by the Council, it is time for the Council to clearly establish the goal of phasing out the use of DGN gear once and for all.

In March 2014, prior to the Council's June 2014 decision to develop a hard cap regime, the Council articulated the goal of "...developing a comprehensive plan to transition the current drift gillnet fishery to a fishery utilizing a suite of more environmentally and economically sustainable gear types that can effectively target the healthy West Coast swordfish stock operating under MSA authority."⁷ The Council tasked its staff and advisory bodies with "...initial development of a fishery transition plan and possible regulations under a typical MSA process, with the transition period being of sufficient duration to maintain a reasonable commercial flow of swordfish to domestic markets during the transition."⁸

Since then, hard caps and 100% monitoring have failed to be implemented, the fishery has failed at its bycatch performance metrics, and deep-set buoy gear has proven to be a viable alternative, clean gear.

Given these developments, we suggest the Council reestablish the primary goal of transitioning away from DGN gear, and consider alternative mechanisms to phase out the federal DGN permits including:

1. Prohibit future issuance of new DGN permits;
2. Make all DGN permits non-transferable;
3. Establish a sunset date after which DGN permits permanently expire;
4. Retire all latent permits;
5. Establish incentives for fishermen to voluntarily surrender their federal DGN permit; and
6. Support proposed state and federal legislation to phase out the DGN fishery.

Retire latent DGN permits

The Council has previously recognized that many DGN permits are not actively fished. The 2015 Swordfish Management and Monitoring Plan established goals for "limiting fishing effort in the DGN fishery" and to "[d]etermine the appropriate number of federal limited entry permits based on the bycatch reduction goal."⁹

The number of DGN permits (74 state DGN permits as of 2017) 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 could use its previously established control date of June 2014 as a potential benchmark to define active versus latent permit holders or the Council could evaluate latency based on landings over the most recent 5-year period.

Transition active DGN fishery participants to clean gear

Deep-set buoy gear has proven to be a profitable commercial gear type to target swordfish with minimal bycatch. According to NOAA Fisheries, in 2017, five vessels fishing deep-set buoy gear landed fish

⁷ PFMC March 2014 Council Meeting Decision Summary Document. Available: <http://www.pcouncil.org/wp-content/uploads/0314decisions.pdf> at 4-5.

⁸ Id at 5.

⁹ PFMC 2015. Pacific Coast Swordfish Fishery Management and Monitoring Plan. September 2015. https://www.pcouncil.org/wp-content/uploads/2018/05/G7_Att1_Swordfish-Plan_fromSept2015BB_Jun2018BB.pdf

valued at \$408,874 (\$81,774 per vessel) while 17 drift gillnet vessels landed fish valued at \$890,443 (\$52,379 per vessel).¹⁰

The 2015 Swordfish Monitoring and Management Plan lists the following action: "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 include endorsements for more than one gear type or to encourage swapping a DGN permit for a permit for another fishery/gear type."¹¹

Since then, NMFS has established a federal limited entry permit for DGN and the Council is now considering a range of alternatives for DSBG authorization and permitting. The Council is wrestling with the question of whether to make DSBG permits open access or limited entry. We urge the Council to follow through with its stated goal by selecting a final preferred alternative that:

- 1) Establishes a limited entry permit regime for DSBG; and
- 2) Allows for voluntary permit trade-ins such that an active DGN permit holder can surrender a DGN permit in exchange for a limited entry DSBG permit(s).

Limit DGN effort

We request the Council consider a total effort cap on the number of annual DGN sets, on a fleetwide or vessel basis. Total bycatch in the DGN fishery (# of animals discarded) has declined over time, alongside a commensurate decline in the number of active vessels and number of sets. Capping DGN fishing effort at current levels provides a way to prevent increases in bycatch, and lowering the limits over time could be a pathway to phasing out DGN effort as DSBG effort increases.

Establish DGN bycatch caps

In its letter to the Council explaining the withdrawal of DGN hard caps, NMFS stated that the Council could revise its proposed regulations to further reduce the probability of protected species interactions in the DGN fishery, including "specifying reduced time/area closures, which could be expected to meet the purpose of the proposed regulations."¹²

We request the Council establish a revised hard caps regime, including changing the duration for which the fishery would be closed should a cap be reached, and hard caps that trigger time and area closures. Such a process could consider hard caps and time/area closures like the emergency measures implemented in 2013 to protect endangered sperm whales,¹³ or other variations to meet the objective of minimizing and controlling bycatch in this fishery, establishing accountability measures for the DGN fishery, and incentives to switch to clean gear types. The Council could focus initial efforts on species in which performance metrics have been exceeded in the last two years.

¹⁰ Pacific Council Swordfish Landings Report, May 2018, Available: https://www.pcouncil.org/wp-content/uploads/2018/05/G7_Att2_Landings_of_swordfish_2008-2017_Jun2018BB.pdf

¹¹ PFMC 2015. Pacific Coast Swordfish Management and Monitoring Plan. Available: http://www.pcouncil.org/wp-content/uploads/2015/08/G2_Att1_SwordfishPlan1509_SEPT2015BB.pdf, at page 4.

¹² Barry Thom (NMFS) (June 9, 2017). Available: http://www.pcouncil.org/wp-content/uploads/2017/06/H1a_Sup_NMFS_Rpt2_DGN_Jun2017BB.pdf

¹³ 78 Fed. Reg. 54,548 (September 4, 2013). NMFS issued temporary regulations under the authority of the MSA to implement an immediate closure of the California swordfish DGN fishery for the remainder of the season if one sperm whale was observed killed or seriously injured in DGN gear off California, and required all DGN fishing vessels to carry an observer when fishing in areas deeper than the 1,100 fathoms.

In considering hard caps, the Council should consider the full suite of performance objectives related to finfish of concern, overall retention rate, marine mammals, and other species of concern. Some of these may be applied on a vessel-specific basis, while others may be more appropriate to apply fleetwide. We encourage the Council to broadly consider potential uses and application of bycatch hard caps.

Require 100 percent monitoring of the DGN feet and remove the unobservable fishing vessel exemption

The surest way to understand the full impacts of the DGN fishery and resolve uncertainty surrounding bycatch estimates is to require 100 percent observer coverage or monitoring. As such, in 2015 the Council recommended NMFS maintain a minimum 30 percent observer coverage level until 2018, at which point the Council requested NMFS remove the unobservable vessel exemption and establish 100 percent observer coverage and/or monitoring.

We note the costs of observer coverage and monitoring in the NMFS report, and the identification of potential funding opportunities in Table 8 including the Saltonstall-Kennedy Grant program. However, it is problematic to assert that 100% monitoring is cost prohibitive after The Nature Conservancy previously applied for and received a Saltonstall-Kennedy Grant specifically to test and implement lower cost Electronic Monitoring in the DGN fishery, and were forced to return the funds to NOAA after the DGN fleet refused to participate. In other words, the industry made an explicit decision to reject an opportunity to reduce monitoring costs. Therefore, the purported high costs should not prevent the Council and NMFS from moving forward to implement its 100% monitoring goal.

We remain concerned that the existing monitoring program does not provide statistically reliable estimates of numerous species caught in the DGN fishery. Observer coverage levels have fluctuated widely in recent years, and despite the 30 percent observer coverage target recommended by NMFS in 2011,¹⁴ only 10.8 percent of DGN sets were observed in the 2015-16 fishing season (the lowest level in over a decade) and only 18.4 percent of sets were observed last season. We are disappointed NMFS has recently reduced its target from the previous 30% down to 20%. Current coverage remains inadequate to accurately and precisely document marine mammal and sea turtle takes, and the lack of observer coverage creates an incentive for fishermen to fish differently when an observer is onboard, creating a negative bias in bycatch estimates that is not accounted for.

On average, more than 80 percent of sets are unobserved, and four to six vessels never take aboard any observers (18 to 27 percent of the fleet in recent years). As recognized by the Council in its September 2015 final preferred alternative, 100 percent observer coverage is needed for accurate and precise estimates of rare event bycatch (e.g. rare and protected species).¹⁵ Increased coverage will provide greater certainty to the fleet, the concerned public, and fishery managers regarding bycatch in this fishery.

¹⁴ In 2011 NMFS recommended 30 percent observer coverage for this fishery “to better document bycatch of rare and sensitive species.” National Marine Fisheries Service. 2011. U.S. National Bycatch Report [W. A. Karp, L. L. Desfosse, S. G. Brooke, Editors]. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-F/SPO-117E, 508 p. at 359 and in 2015 the Council recommended NMFS maintain at least 30 percent observer coverage until 2018, when the Council requested 100 percent monitoring be implemented.

¹⁵ Babcock, E. A., and E. K. Pikitch. 2003. How much observer coverage is enough to adequately estimate bycatch? Pew Institute for Ocean Science and Oceana, 36 p. Available: <http://oceana.org/sites/default/files/reports/BabcockPikitchGray2003FinalReport1.pdf>

Cease efforts to allow DGN into the Pacific Leatherback Conservation Area (PLCA)

We request the Council eliminate the goal of allowing DGN fishing back into the PLCA. This closure has been effective in reducing leatherback interactions and avoiding jeopardy under the Endangered Species Act. Since the Council included the goal of allowing access to the PLCA in 2015, new scientific studies have:

- identified a continued decline in Pacific leatherback sea turtles in foraging areas off California at an annual rate of -3.7%;¹⁶
- evaluated whether the extent of the PLCA is optimal for leatherback turtle conservation and concluded that the temporal extent of the Pacific Leatherback Conservation Area is the “...shortest and most effective for protecting the turtles while allowing fishing during low bycatch-risk periods”;¹⁷ and
- estimated population limit reference points for Western Pacific leatherback turtles in the U.S. West Coast exclusive economic zone (EEZ), including an estimate that no more than 0.8 turtles can be killed in the U.S. West Coast EEZ per five years to limit delay of population rebuilding.¹⁸

Any further efforts to allow access to the PLCA would be a wasteful use of resources and workload that is simply not realistic given the dire state of Pacific leatherback sea turtles.

Cease efforts to authorize pelagic longline gear

Oceana opposes efforts to schedule scoping for an HMS fishery management plan (FMP) amendment that would authorize a pelagic shallow-set longline swordfish fishery off the U.S. West Coast, outside the EEZ, and we oppose proposals to ‘test’ pelagic longlines inside the West Coast EEZ. The California Current Ecosystem is globally important for its unique oceanographic conditions supporting a diverse array of wildlife, including sea turtles, sea lions, whales, dolphins, seabirds, and commercially and recreationally important fish species. The use of pelagic longlines has been duly considered, and appropriately rejected on several occasions; there is no need to revisit it now.

In 1989, with the enactment of Section 9028 of the Fish and Game Code, the California Legislature prohibited pelagic longline fishing in the EEZ off the California coast by banning the use of hook and line fishing gear longer than 900 feet.¹⁹ This gear prohibition is incorporated in the Council’s HMS FMP, and when faced with the opportunity to authorize pelagic longlines in 2009, the Council selected a “no-action” alternative due to bycatch concerns.

Pelagic shallow-set longlines are not a rational gear alternative for swordfish fishing off the West Coast. Shallow-set longlines in the U.S. Atlantic, Canadian Atlantic, and Hawaii had discard rates ranging from 44-51% of total catch with discard mortality rates of 20-36%.²⁰ In deep-set longline experiments off

¹⁶ Benson, S.R. et al. 2018. A long-term decline in the abundance of leatherback turtles, *Dermochelys coriacea*, at a foraging ground off California, USA. Proceedings of the 38th Annual Symposium on Sea Turtle Biology and Conservation (Abstract).

¹⁷ Eguchi, T., S.R. Benson, D.G. Foley and K.A. Forney. 2016. Predicting overlap between drift gillnet fishing and leatherback turtle habitat in the California Current Ecosystem. Fisheries Oceanography. 26:1, 17-33. Available: <https://onlinelibrary.wiley.com/doi/abs/10.1111/fog.12181>

¹⁸ Curtis et al. 2015. Estimating Limit Reference Points for Western Pacific Leatherback Turtles (*Dermochelys coriacea*) in the U.S. West Coast EEZ. PLOS One. Available: <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0136452>

¹⁹ Cal. Fish & Game Code § 9028

²⁰ Turner, C., Shester, G, and Enticknap, B. November 2015. Providing domestically caught US West Coast Swordfish: How to Achieve Environmental Sustainability and Economic Profitability. Available:

California, 76% of the catch was unmarketable species while swordfish represented less than 2% of the catch.²¹ The Hawaii shallow-set longline fishery from 2007-2017, had a 46% discard rate comprising 88 different species, a 31.4% rate of discard mortality and injury, and over 1,000 takes of protected marine mammals, sharks, sea turtles, and seabirds including seven ESA-listed species.²²

In 2016, a petition signed by 24,494 U.S. residents opposing authorization of pelagic longline fishing gear off the U.S. Pacific Coast was submitted to the Council.²³ Rather than wasting efforts on untenable pelagic shallow-set longline gear alternatives, the Council should continue to focus on the development and authorization of deep-set buoy gear as a responsible, clean, low impact fishing gear for targeting swordfish off the U.S. West Coast.

Address foreign swordfish fisheries with import provisions and by authorizing clean gear

We share NMFS and the Council's concern about the impacts of foreign swordfish fisheries and we support actions to address bycatch in these fisheries. In 2016 NMFS issued a final rule²⁴ implementing import provisions of the Marine Mammal Protection Act that will require nations exporting fish and fish products to the U.S. be held to the same bycatch standards as U.S. commercial fishing operations. 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 Council can act to ensure U.S. consumers have access to sustainable, domestically caught swordfish by authorizing DSBG. This clean gear has the potential to increase domestic landings with minimal bycatch. The Council should also work closely with NMFS to establish and enforce import standards on foreign-caught swordfish.

Thank you for your commitment to transition to a clean U.S. West Coast swordfish fishery. Despite the agency's withdrawal of the hard cap rule, the Council should move forward with a suite of available management tools to reduce and control bycatch, phase out the use of DGN gear, prevent the introduction of harmful pelagic longlines, and promote an expanded domestic swordfish fishery with deep-set buoy gear innovated by West Coast scientists and fishermen.

Sincerely,



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

http://www.pcouncil.org/wp-content/uploads/2015/11/G2b_Sup_Public_Comment3_ELECTRONIC_ONLY_Nov2015BB.pdf

²¹ NMFS Deep Set Longline Study. Available: http://www.pcouncil.org/wp-content/uploads/K5b_SUP_SWFSC_PPT1_MAR2014BB.pdf, slide 12.

²² https://www.pcouncil.org/wp-content/uploads/2018/02/B1b_Pub_Comment_2_Oceana_LLSwordfish_Mar2018BB.pdf

²³ http://www.pcouncil.org/wp-content/uploads/2017/03/B1b_Sup_PubCmt3_FullVersionElectricOnly_Oceana_Apr2017BB.pdf

²⁴ 81 FR 54389. Available: <https://www.federalregister.gov/documents/2016/08/15/2016-19158/fish-and-fish-product-import-provisions-of-the-marine-mammal-protection-act>