



May 12, 2018

Mr. Phil Anderson, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

RE: Agenda Item G.7 - Swordfish Management Project Planning and Observer Coverage

Dear Chair Anderson and Council Members,

Myself and fellow advocates at Heirs to Our Oceans have had the honor of traveling to other parts of the globe to educate youth about what is happening to the oceans and waterways they will inherit. I will be in Micronesia during the June PPMC meeting, so unfortunately I cannot be present to testify about the concerns I share in this letter. I will be working with 35 youth ages 11-17 from around the Pacific for two weeks where we will dive deeply into looking at the problems our oceans face and working on solutions.

Part of my work as an Heir involves telling stories about where I'm from and the good work that is happening in my community and my State. Many are surprised to learn that destructive fishing practices like mile-long drift nets are still in use in a place like California. We can change this!

Drift nets harm our ocean wildlife. The gear is responsible for overfishing incidents across the globe and it often becomes derelict, set adrift in the ocean as ghost nets. Drift nets have also created bycatch out of endangered species such as the Leatherback Turtle and the Sperm Whale among many other important species.

I recently learned that during the 2017-2018 fishing season, the drift gillnet fishery exceeded their allowable take of gray whale, elephant seal, and hammerhead sharks as adopted by the Council. The season before it was northern right whale dolphin.

The recent video from Mercy for Animals showing the gruesome injury and death that goes on in this fishery was horrifying to see. Even though it is difficult to watch, I encourage

you to view this important footage. I don't see how anyone can watch this video and conclude that we should allow these fishing practices to continue.

Several incidents from the video footage do not show up in reports to the NOAA. How will this be managed? Why shouldn't the NOAA know about what is happening to our oceans with this fishing practice? When will this end? What will need to occur to finally change course and recognize that we cannot continue to feed our economy with practices that destroy our natural resources to this extent? Just like the coal mining industry must evolve for the sake of future generations, so must the commercial fishing industry.

Drift nets are no longer called by their original name. They are known as "death nets."

The nets also commit a secondary harm as derelict fishing gear (DFG). According to a recent study published in the journal Nature, fishing nets account for 46% of the trash in the Great Pacific Garbage Patch.¹ DFG results in entanglements of and ingestion by marine animals and is one of the greatest source of plastic pollution in our oceans.

Every time we do beach cleanups we pick up mounds of fishing gear. The polypropylene becomes microplastics after breaking down in the salt water and sun which then can't even be picked up. Microplastics don't entangle marine life. Rather, they create a toxic plastic soup in our oceans that zooplankton is eating, harming the base of our food chain, and bio-cumulating resulting in high levels of the petro-chemical toxins in the apex predators such as swordfish and tuna which humans eat. And like in Micronesia, many people who lives on the coast and on islands are reliant upon eating fish as a main protein source, so we should do our part not only for future generations but also the communities who are suffering due to the harmful fishing practices utilized by the industrial world. I believe the Council should not promote fishing gear that is destructive on multiple levels.

There is still hope. I recently spoke at the CA Senate's Natural Resources and Water Committee about these 'walls of death'. Fortunately, the bill passed the Committee 7-2. Excitingly, three U.S. Representatives have proposed a Federal ban on this practice through bill S.2773, the Driftnet Modernization and Bycatch Reduction Act. That is such great news!

I ask this Council to ban drift nets and to require the use of Deep Set Buoy Gear. You have the power to make this choice. You are who my generation depends on. I care about these animals. I have had up close and personal experiences with turtles, whales, sharks, dolphins and seals. I want the rest of my generation to have these experiences too. I want my kids and grandkids to feel this magic of the ocean.

¹ National Geographic, <https://news.nationalgeographic.com/2018/03/great-pacific-garbage-patch-plastics-environment/>, 2018

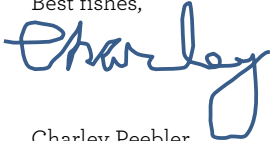
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More so, my generation needs a healthy marine ecosystem. We are on a water planet, and we have just one. Our oceans and accordingly all water connected to our oceans won't survive without zooplankton, without apex predators, without forage fish, without marine mammals, without healthy populations, without water free of toxic plastic.

There are solutions, we just need to adopt them. I am asking this Council, please do. Your kids and grandkids will feel the effects of the Council's decisions, so please we ask that you make the right one, one that considers the oceans that we will inherit.

Thank you for the opportunity to comment. To contact me: charley@heirstoouroceans.com

Best fishes,

A handwritten signature in blue ink that reads "Charley". The signature is stylized with a large, looped "C" and a long, sweeping underline.

Charley Peebler
8th Grade
Heirs To Our Oceans
174 Lakeview Way
Redwood City, CA 94062

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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 fleet 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

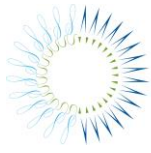
http://www.pcouncil.org/wp-content/uploads/2015/11/G2b_Sup_Public_Comment3_ELECTRONIC_ONLY_Nov2015BB.pdf

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>



THE
PEW
CHARITABLE TRUSTS



EARTHJUSTICE

May 30, 2018

Re: Agenda Item G.7, Swordfish Project Planning & Review of Observer Coverage

Dear Chair Anderson and members of the Council:

Restrictions placed on the large mesh drift gillnet gear (DGN) since its introduction on the West Coast, including time and area closures, gear modifications, and the recently withdrawn hard cap regime, demonstrate the difficulty in meeting acceptable bycatch standards with inherently unselective gear. As such, we write to encourage the Council to transition the West Coast swordfish fleet away from the use of large mesh drift gillnet (DGN) gear toward more selective and actively tended gears with minimal bycatch including harpoon, deep-set buoy gear (DSBG) and linked buoy gear (LBG). Criticism of the environmental damage caused by DGN gear is not new or unique to this region.

Considering NOAA Fisheries' withdrawal of the hard cap rule, we suggest the Council discuss the following items and take action to:

1. reaffirm the Council's support and rationale for 100 percent monitoring in the DGN fishery and adopt "Action Alternative 3" as a Preliminary Preferred Alternative (PPA);
2. require a prescribed management response when the DGN fishery exceeds a performance metric;
3. prioritize the authorization of deep-set buoy gear (DSBG); and
4. forgo any future consideration of a West Coast based longline fishery.

Over the last several years, the Council has deliberated several times on how to manage this fishery. Each time, the discussions acknowledged the need to address bycatch in the DGN fishery. Additionally, the public, through comment letters and testimony, have demonstrated broad-based support for reformation of this fishery. We provide the following comments and recommendations for the Council's consideration.

Reaffirm the Council's support and rationale for 100 percent monitoring in the DGN fishery

We request that the Council send a letter to NOAA Fisheries that reaffirms support for 100 percent monitoring in the DGN fishery to help build the record for rulemaking. Although the hard cap rule was withdrawn, NOAA Fisheries plans to issue a separate rule addressing monitoring in the DGN fishery. According to the observer data, over the last 3 years, several

vessels in the DGN fishery were unobservable resulting in an average of 36.4 percent of the effort in the DGN fishery being unobservable.¹ One of these vessels conducts a majority of the effort in the fishery.² Last season, only 18 percent of total effort was observed.³ This level of observer coverage is not adequate in a fishery with known bycatch issues.

In order to collect a statistically valid sample of the fishery's bycatch with the current level of effort in this fishery, 100 percent monitoring is required. This eliminates the need for extrapolation of observed takes and the possibility that the fishery is shut down prematurely due to excessive takes of protected species. We are sympathetic to the cost of observer coverage and understand that NOAA Fisheries will not be able to fund 100 percent of the monitoring costs in the DGN fishery. For this reason, the Council should consider requiring industry funding to meet the requisite level of observer coverage as is done in other Council-managed fisheries.

Require a prescribed management response when the DGN fishery exceeds a performance metric

Given the need to address bycatch levels, we request the Council identify a meaningful management response when the DGN fishery exceeds a marine mammal, sea turtle or finfish performance objective. This should include a structure and process for systematic review of bycatch data and define levels or trigger points at which management responses would be warranted, including time/area closures, gear modifications or complete closure of the fishery.

Last year, the DGN fishery exceeded the performance metric for short-finned pilot whales by 15 individuals catching an estimated 26 animals. There was little Council discussion on this item and no response to the exceedance of a performance metric. This season, the DGN fishery exceeded 3 performance metrics including gray whale, hammerhead shark, and elephant seal.⁴

The failure of the DGN fishery to meet Council-adopted performance metrics highlights the ongoing bycatch issues in this fishery and the need for additional management measures to address unacceptable levels of bycatch. We remind the Council that the performance

¹ NMFS Report on HMS Activities, June 2018, p. 5 available at https://www.pcouncil.org/wp-content/uploads/2018/05/G7_Att3_NMFSRpt_from03.2018BB_Jun2018BB.pdf

² *Id.*

³ NMFS West Coast Region Observer Program Observed Catch - 2017/2018 Drift Gillnet Fishing Season May 1, 2017 through January 31, 2018, available at http://www.westcoast.fisheries.noaa.gov/publications/fishery_management/swr_observer_program/drift_gillnet_catch_summaries/observeddgncatch2017-2018.pdf.

⁴ HMSMT Report on Performance Metrics for the 2017/2018 California/Oregon Large-Mesh DGN Fishery, June 2018, available at https://www.pcouncil.org/wp-content/uploads/2018/05/G3a_HMSMT_Rpt1-DGN_Performance_Metrics_JUN2018BB.pdf.

objectives adopted were based on the *highest* level observed for that species between 2004 and 2014 meaning that when the DGN fishery exceeds this level, it is not simply exceeding an average level of bycatch, but a maximum level of bycatch. This demonstrates that the bycatch in the DGN fishery is not decreasing and fishery managers are not minimizing bycatch to the maximum extent practicable as required by the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

We also recommend the Council consider revising their Finfish Retention Rate metric as the current metric does not meet the definition of bycatch in the MSA because it does not account for “live” discards.⁵ With no data on post-release survivorship of bycatch species after an interaction with DGN gear, it is impossible to know the true impact of the DGN fishery. By assessing the actual bycatch rate in the DGN fishery as defined by federal law, the Council will have a better understanding of the scale and potential impact of the fishery.

Prioritize the authorization of DSBG

In determining next steps for the swordfish fishery, we request the Council prioritize the authorization of DSBG and maintain the schedule laid out in the March 2018 motion which schedules final action next March 2019.

A total of 743 DSBG sets have been made on 192 trips by six cooperative fishing vessels under the PIER DSBG EFP alone.⁶ This data has been collected over 7 years under variable ocean conditions with consistent catch composition and over 98 percent marketable catch. Deep-set buoy gear has broad support from a variety of stakeholders. The conservation community is supportive of DSBG due to its selective design, serviceability, and ability to catch swordfish with minimal bycatch.

DSBG has also been shown to be profitable for fishermen. Swordfish caught with DSBG can garner double the price per pound as fish caught with DGN or longline gear⁷ because buoy-caught fish are fresher and in better condition. According to NOAA Fisheries, in 2017, five vessels fishing DSBG had an ex-vessel revenue of \$408,874 (\$81,774 per vessel) while seventeen DGN vessels had an ex-vessel revenue of \$890,443 (\$52,379 per vessel).⁸ On

⁵ Under the MSA, bycatch is defined as “fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards.” 16 U.S.C. § 1802(2).

⁶ PIER DSBG EFP Update to Council, available at https://www.pcouncil.org/wp-content/uploads/2018/05/G4_Att1_PFMC_2017-2018.BB_PIER-DSBG.EFP_Update_Jun2018BB.pdf

⁷ CDFW Update on Landings of Tuna, Swordfish and other Pelagics, November 2017, see table on p.5, available at https://www.pcouncil.org/wp-content/uploads/2017/11/H2c_Sup_CDFW_Rep_International20171107_NOV2017BB.pdf

⁸ Pacific Council Swordfish Landings Report, May 2018, available at https://www.pcouncil.org/wp-content/uploads/2018/05/G7_Att2_Landings_of_swordfish_2008-2017_Jun2018BB.pdf

average, DGN vessels profit between \$400-\$1,000 per day,⁹ while DSBG vessels average \$1,000 per day.¹⁰

We ask the council to consider what risk there is in moving forward with the authorization of a DSBG fishery. We believe there is none. Nearly 8,000 hours of on the water fishing suggests that the risk of interaction with protected and sensitive species is extremely low. Active tending of the gear has led to 100 percent survivorship of all released bycatch. Further, once authorized, a DSBG fishery could produce a significant amount of swordfish,¹¹ which could lessen reliance on imported swordfish, provide more opportunity for West Coast fishermen, and increase domestic production. Assuming an average dressed weight of 150 per swordfish, a 50 vessel DSBG fishery has the potential to land 260 metric tons of swordfish¹² which is more than the DGN fishery has landed in nearly a decade.

Forgo any future consideration of a West Coast based longline fishery

The introduction of a West Coast-based longline fishery would be highly controversial and inconsistent with the Council's duties under the MSA, Endangered Species Act (ESA), and Marine Mammal Protection Act (MMPA). It makes little sense for the Council to consider the authorization of a longline fishery given these concerns and other HMS workload. We ask that this item be removed from the Council's year at a glance calendar.

Longlines are known to have high bycatch of protected and recreationally important species that should not be included in the suite of gears allowed under the HMS Fishery Management Plan (FMP). As the Council looks toward alternative gears, it is important to consider their overall ecosystem impact and evaluate which gears are likely to meet the Council's twin goals of reducing bycatch and promoting a West Coast swordfish fishery, as well as its duties to prevent overfishing and conserve species protected under the ESA and MMPA.

It is difficult to see a way in which increased longline effort would not increase take of protected species and bycatch of finfish. In 2014, the Hawaii shallow-set longline fishery caught 16 leatherback and 15 loggerhead sea turtles.¹³ This is far above the number of

⁹ NMFS Report on Highly Migratory Species Activities, March 2018, Table 6: Estimated average variable profit per DGN day at sea, p. 7, available at https://www.pcouncil.org/wp-content/uploads/2018/03/11a_Sup_NMFS_Rpt3_Draft_Increased_Monitoring_Analysis_031218_Mar2018BB.pdf

¹⁰ Sepulveda et al., Exempted testing of deep-set buoy gear and concurrent research trials on Swordfish, *Xiphias gladius*, in the Southern California Bight, 2018, p. 18.

¹¹ HMSMT Report on DSBG Authorization, June 2018, p.13 available at https://www.pcouncil.org/wp-content/uploads/2018/05/G5a_HMSMT_Rpt1_DSBG_ROA_Analysis_Jun2018BB.pdf

¹² *Id* (assuming constant returns to scale, a 50 vessel DSBG fishery could land 3,481 swordfish).

¹³ [Scoping Information Document for Council Action to Authorize the Use of Shallow-Set Longline Gear outside the West Coast Exclusive Economic Zone under the Fishery Management Plan for West Coast Fisheries for Highly Migratory Species](#), p. 4.

turtle takes currently authorized in the West Coast swordfish fishery. The Hawaii fishery was closed this year due to concerns over excessive takes of loggerhead sea turtles.¹⁴ Since 2004, the Hawaii shallow-set fleet has also caught over 8,000 billfish,¹⁵ which are not permitted to be landed on the West Coast under the Billfish Conservation Act¹⁶ and would be required to be discarded as bycatch.

Further, with the designation of overfishing on the Eastern Pacific Ocean (EPO) stock of swordfish,¹⁷ the Council should consider how increasing longline effort could exacerbate fishing pressure on this stock. The Hawaii fishery is known to catch fish from the EPO stock and many assume that a West Coast fleet would fish primarily in the eastern portion of the Hawaii fishery's range, closer to the EPO stock boundary.¹⁸ Climate change and stronger El Niño events may also effect the distribution of the EPO swordfish stock.¹⁹ It is important that managers assess what, if any, changes are occurring and how this could increase the amount of EPO fish caught in any potential longline fisheries particularly when the stock boundary line is admittedly arbitrary.²⁰

The most recent stock assessment of the Western Central and North Pacific Ocean (WCNPO) stock of swordfish is also telling.²¹ Projections for the WCNPO stock were conducted using eight harvest scenarios through 2016. For the high harvest rate scenarios, exploitable biomass was projected to decline below B_{MSY} . In comparison, the stock would not be expected to experience any overfishing under the status quo catch and status quo harvest rate scenarios. Essentially, the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean found that any significant increase in the harvest level on this stock would likely result in the stock experiencing overfishing. The

¹⁴ Pacific Island Fisheries; Closure of the 2018 Hawaii Shallow-Set Longline Fishery; Court Order, Temporary Rule, 83 FR 21939, May 8, 2018, available at <https://www.federalregister.gov/documents/2018/05/11/2018-10096/pacific-island-fisheries-closure-of-the-2018-hawaii-shallow-set-longline-fishery-court-order>

¹⁵ *Id.*

¹⁶ [Billfish Conservation Act of 2012](#), H.R. 2706.

¹⁷ [Determination of Overfishing or an Overfished Condition](#), Fed. Reg. Volume 80, Number 170, p.53115, Wednesday, September 2, 2015.

¹⁸ [Scoping Information Document for Council Action to Authorize the Use of Shallow-Set Longline Gear outside the West Coast Exclusive Economic Zone under the Fishery Management Plan for West Coast Fisheries for Highly Migratory Species](#), Figure 6, p. 9.

¹⁹ Cheung et al., *Projecting future changes in distributions of pelagic fish species of Northeast Pacific shelf seas*, Progress in Oceanography, Vol. 130, January 2015, pp. 19-31 (predicting eastern Pacific species shifting poleward by 30 km per decade).

²⁰ [Scoping Information Document for Council Action to Authorize the Use of Shallow-Set Longline Gear outside the West Coast Exclusive Economic Zone under the Fishery Management Plan for West Coast Fisheries for Highly Migratory Species](#), p. 17 ("This boundary is quasi-arbitrary so the actual catch of EPO swordfish by the Hawaii SSLL fishery could be more or less than the amount stated in the notification.").

²¹ [Report of the Seventeenth Meeting of the International Scientific Committee for Tuna and Tuna-Like Species in the North Pacific Ocean](#), p. 44.

Council should consider what impact the effort level of a West Coast-based longline fishery could have on the WCNPO swordfish stock status.

Given the ability of new gears to target swordfish with significantly lower bycatch and ecological impact, we ask the Council to reaffirm its 2009 decision not to move forward with a longline fishery outside the exclusive economic zone.²² Longlines have been prohibited off our coast for over a decade²³ and in California waters for over 25 years.²⁴ The reasons given for not authorizing this fishery in 2009 are still relevant and some even more significant than they were at that time. In recent years the Council has de-prioritized this work, only to see it emerge on the planning schedule. Time and energy should be invested in new gears such as DSBG and LBG that can catch swordfish with minimal bycatch.

Conclusion

At the June meeting, the Council can change management of the West Coast swordfish fishery and move toward more selective and actively tended gear types. The public's support for such a transition is abundantly clear. Thousands of people and dozens of organizations and businesses have contacted the Council urging a shift away from DGN gear. By discussing the above issues, the Council can take a broader view of the management of the swordfish fishery and can set its priorities to reflect the Council's bycatch reduction goals.

Sincerely,



Paul Shively
Project Director
U.S. Oceans, Pacific



Andrea Treece
Staff Attorney, Oceans Program
Earthjustice

²² Decisions of the 198th Session of the PFMC, p.1 available at <http://www.pcouncil.org/wp-content/uploads/0409decisions.pdf>

²³ [Final rule to prohibit shallow longline sets east of 150° W](#), 50 CFR Part 223, Fed. Reg. Vol. 69, No. 48, Thursday, March 11, 2004.

²⁴ In 1989 with the enactment of Section 9028 of the Fish and Game Code, the California Legislature prohibited pelagic longline fishing off the California coast by banning the use of hook and line fishing gear longer than 900 feet.



May 30, 2018

Re: Agenda Item G.7, Swordfish Project Planning & Review of Observer Coverage

Dear Pacific Fishery Management Council:

Thank you for the opportunity to comment on project planning and observer coverage for swordfish fishing. This letter is written on behalf of the over 80,000 members of Turtle Island Restoration Network. In observation of the continuing difficulty of reducing bycatch of the drift gillnet fishery to acceptable levels, we encourage the Council to transition swordfish fishing away from the drift gillnet fishery.

We continue to support the increase to 100% monitoring for the drift gillnet fishery as well as further management to address the ongoing bycatch concerns in this fishery. Additionally, we encourage the Council to prioritize the authorization of deep-set buoy gear to further facilitate fishermen to transition away from drift gillnets to use this less harmful method to catch swordfish.

Although the Council regularly considers issues surrounding the drift gillnet fishery, this fishery has mostly been allowed to operate out of sight and out of mind to the public. That's why Turtle Island Restoration Network, working with a coalition including Mercy For Animals, SeaLegacy and Sharkwater worked to capture undercover footage of the fishery. The video footage reveals how marine animals - including protected species - are routinely trapped and killed in driftnets. Animals are documented being cut apart alive and left to slowly suffocate aboard driftnet boats just off California's coast.

The footage is a reminder of what is at stake in the management decisions regarding the driftnet fishery. The footage has been viewed by millions of people. The viewers are taking action and calling for the protection of ocean wildlife. 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 Burdyschaw
Advocacy & Policy Director
Turtle Island Restoration Network