

## STAFF SUMMARY FOR OCTOBER 11-12, 2017

**25. SWORDFISH DRIFT GILLNET FISHERY****Today's Item****Information** ☐**Action** ☒

Discuss and adopt a resolution regarding the National Marine Fisheries Service (NMFS) rejection of a hard-cap rule for the California drift gillnet (DGN) swordfish fishery.

**Summary of Previous/Future Actions**

- |   |                                    |
|---|------------------------------------|
| • MRC received public request for overview      | Mar 23, 2017; MRC, San Clemente    |
| • FGC approved MRC request to add topic         | Jun 21-22, 2017; Smith River       |
| • MRC discussion                                | Jul 20, 2017; MRC, Santa Rosa      |
| • Previous FGC discussion                       | Aug 16, 2017; FGC, Sacramento      |
| • <b>Discussion on hard caps and resolution</b> | <b>Oct 11-12, 2017; Atascadero</b> |

**Background**

At its Aug 16, 2017 meeting, FGC heard testimony on a range of issues regarding the DGN swordfish fishery and approved sending a letter to the Pacific Fishery Management Council (PFMC) requesting that it consider adopting a range of gear alternatives for DGN permits for deep-set buoy gear (DSBG) and linked buoy gear (LBG). The letter (Exhibit 6) articulated that PFMC should prioritize alternatives that develop the DGN fishery but also encourage and create an incentive for current DGN fishermen to engage in commercial DSBG or LBG to reduce bycatch. DSBG and LBG provide alternative gear for use in the swordfish fishery that more selectively target highly migratory species.

At its Sep meeting, PFMC adopted a range of alternatives for authorizing DSBG, changes to federal permitting, as well as guidance and analysis on the gear types. PFMC will review the analysis on gear types, further refine the range of alternatives, and possibly select a preliminary preferred alternative at its March 2018 meeting.

Furthermore, at its Aug 2017 meeting, FGC directed staff to draft a resolution regarding the NMFS rejection of a hard-cap rule for the DGN fishery due to incidental take of marine mammals and sea turtles. The draft resolution (Exhibit 1) highlights the frustration from FGC regarding the NMFS decision to withdraw the proposed hard-cap rule for the California DGN fishery. Hard caps would have provided increased transparency as well as making way for modernization of the fishery. The rule was intended to provide an incentive to fishermen to further avoid interactions with protected species and to promote individual responsibility as well as communication and innovation by fishermen.

As outlined in the Magnuson-Stevens Fisheries Conservation and Management Act, NMFS is to base its decisions on a variety of considerations, including science, economics and social issues in order to make informed choices. The NMFS decision seems based on only one of the considerations (economic) required by the act, rather than the range of issues NMFS is to address. NMFS' job is to consider and weigh these choices to help make difficult decisions.

## STAFF SUMMARY FOR OCTOBER 11-12, 2017

**Significant Public Comments**

FCG has received email correspondence from Lieutenant Governor Gavin Newsom (Exhibit 2) supporting efforts to engage with stakeholders to develop balanced and informed policies. Numerous emails from the public request that FGC end the DGN fishery in California; examples are found in exhibits 3-4. FGC has also received comments from Oceana supporting FGC adoption of a resolution on hard caps for the DGN swordfish fishery (Exhibit 5).

**Recommendation**

**FGC staff:** Approve the resolution as amended today.

**Exhibits**

1. [Draft resolution](#)
2. [Email from Lieutenant Governor Gavin Newsom, dated Sep 7, 2017](#)
3. [Email from Tania Pollak, received Sep 28, 2017](#)
4. [Email from Nancy Flores, received Aug 16, 2017](#)
5. [Email from Geoff Shester, Oceana, received Sep 28, 2017](#)
6. [Letter from FGC to PFMC, dated Sep 13, 2017](#)

**Motion/Direction**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission adopts the resolution regarding hard caps for the drift gillnet fishery.

**California Fish and Game Commission**  
**DRAFT Resolution Regarding Drift Gillnet Fisheries**

WHEREAS, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) establishes the primary process for managing fisheries in U.S. federal waters and creates a system whereby individual regional fishery management councils, including the Pacific Fishery Management Council, and agencies develop fishery management plans, amendments, and implementing regulations for fisheries within their geographic jurisdiction; and

WHEREAS, the Magnuson-Stevens Act provides a streamlined process for the approval of regulations implementing fishery management plans that emphasizes the individual decision-making authority of the fishery management councils and limits the actions the U.S. Secretary of Commerce may take in response to council decisions; and

WHEREAS, specifically, upon transmittal of a proposed regulation change to the U.S. Secretary for Commerce, the secretary determines whether the proposed regulation is “consistent with the fishery management plan”; and

WHEREAS, the California drift gillnet fishery for swordfish and thresher shark is managed under the *Federal Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species*; and

WHEREAS, the Pacific Fishery Management Council expressed its intent to change management of the California drift gillnet swordfish fishery using tools available under the Magnuson-Stevens Act to create a new framework to advance the fishery including hard caps on interactions with protected species; and

WHEREAS, recognizing that actions taken by the Pacific Fishery Management Council, the National Marine Fisheries Service, fishermen, and partners over the past twenty years have greatly reduced the inadvertent catch of special status species and other non-target species, and have substantially reduced bycatch rates and improved fishery performance; and

WHEREAS, the National Marine Fisheries Service released a report in June 2017 announcing its withdrawal of a proposed rule implementing hard caps for the California drift gillnet swordfish fishery, the primary purpose of which would have been to create transparency, accountability measures, and incentives for best practices within the fishery; and

WHEREAS, the ruling from the National Marine Fisheries Service does not advance the drift gillnet fishery forward and, in fact, has jeopardized the effective functioning and viability of this fishery in California; and

WHEREAS, the state worked collaboratively for many years to develop these regulations in concert with the industry to develop solutions that would increase environmental sustainability without sacrificing economic performance and viability of the fishery;

NOW, THEREFORE, BE IT RESOLVED, in light of the decision by the National Marine Fisheries Service, the California Fish and Game Commission strongly disagrees with the withdrawal of the hard caps rule; and

FURTHER, BE IT RESOLVED, the California Fish and Game Commission will continue to push for transparent and innovative approaches to fisheries management plans; and

FINALLY, BE IT RESOLVED, that the California Fish and Game Commission will encourage the California Department of Fish and Wildlife to work with industry to further develop new gear types for an environmentally and economically sustainable swordfish fleet in California.

DATED: OCTOBER 12, 2017

DRAFT



**GAVIN NEWSOM**  
LIEUTENANT GOVERNOR

Chuck Bonham  
Director, CA Department of Fish and Wildlife  
1416 9<sup>th</sup> Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Eric Sklar  
President, CA Fish and Game Commission  
1416 9<sup>th</sup> Street, Suite 1320  
Sacramento, CA 95814

September 7, 2017

Dear Director Bonham and President Sklar,

I am writing to thank you for your commitment to use California's authority and expertise to develop a collaborative solution that results in an environmentally and economically sustainable swordfish fishery. Marine animals commonly caught as bycatch have more value if left alive rather than incidentally caught in drift gillnets. At the same time, the state's fishing industry is an important part of California's coastal heritage, and policies should encourage economically viable, sustainable fisheries.

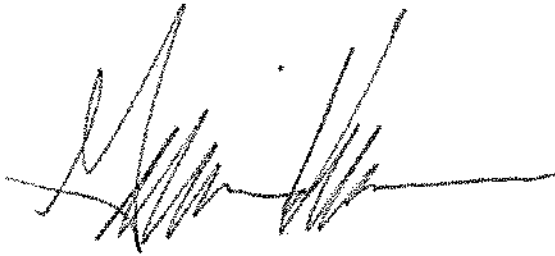
The Fish and Game Commission and the Department of Fish and Wildlife's history of supporting bycatch reduction methods has contributed to progress in reducing the unintended mortality of marine animals, and I applaud your agencies' interest in continuing to pursue balanced policies for this fishery. Your relationship with stakeholders from both the NGO community and the fishing industry allows the unique opportunity to collaboratively develop solutions that reduce bycatch while simultaneously bolstering the fishery's viability for participants. Supporting the authorization of deep-set buoy gear by the Pacific Fishery Management Council will give fishermen the option to use more sustainable gear, and widespread adoption of this new gear can be facilitated by a transition or phase-out plan. Your interest in developing these options, which requires short and long-term planning at multiple levels of government, is commendable for its comprehensive approach and collaboration with stakeholders and agencies.

California's environmental policy seeks to attain environmental protections while preserving or creating economic opportunity. Just as the state's policy on climate change has enabled the state

to aggressively reduce greenhouse gas emissions while promoting economic growth, improving the environmental sustainability of the swordfish fishery should not happen at the expense of the fishery's economic sustainability. Your efforts to engage with stakeholders and represent their interests in decision-making at state and federal levels is a shining example of the state's ability to develop balanced, stakeholder-driven policy.

My office stands ready to support your efforts and I look forward to a progress report in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gavin Newsom', with a long horizontal line extending to the right.

GAVIN NEWSOM  
Lieutenant Governor  
State of California

CC: Phil Anderson, Chair, Pacific Fishery Management Council

-----Original Message-----

From: Tania Pollak

Sent: Thursday, September 28, 2017 11:09 AM

To: FGC <FGC@fgc.ca.gov>

Subject: Please Don't Miss Opportunity to End Driftnet Fishery & Protect Ocean Wildlife

Dear CA Department of Fish & Wildlife, and CA Fish & Game Commission,

I am writing to express my support for California to take all possible actions to end the driftnet fishery happening off our state's coast. For too long, this fishery has been allowed indiscriminately kill ocean wildlife, including endangered species.

Improvements to the fishery have not made the fishery acceptable. Driftnets are still curtains of death. With the advancement of deep-set buoy gear, regulators have a golden opportunity to end the driftnet fishery. I encourage California to do everything it can to stop the slaughter from driftnets.

Like many people, I was disappointed when federal regulators withdrew protections for some of the species most affected by driftnets. I want California to protect the environment, not abuse it. California has a chance now to continue its role of being an environmental leader. Please take action to end the driftnet fishery - California needs to live up to its reputation as a good environmental steward.

Thank you.

Ms. Tania Pollak

San Francisco, CA 94115

**From:** Nancy Flores  
**Sent:** Wednesday, August 16, 2017 10:06 AM  
**To:** FGC <FGC@fgc.ca.gov>  
**Subject:** Fwd: Drift Gillnet Discussion Wednesday, 8/16/17

Dear Fish and Game Commission,

The Trump administration's removal of the proposed rule instituting strict limits on drift gillnets places protected and vulnerable species in grave danger. Any fish, bird or mammal crossing the path of a drift gillnet may be hopelessly tangled and perish in these nets or be thrown back injured as "by-catch." By-catch includes dolphins, whales, turtles, sea birds, sharks, seals and other mammals. Since these nets are not retrieved for days, air-breathing mammals drown if they cannot free themselves. .

More than 20 years ago, in 1994, the United Nations Food and Agriculture Organization estimated global by-catch to be as high as 27 million tons per year, simply discarded by fisheries. In 1987, David Roth Weiss' award-winning oceanographic film, "Incidental Kill" was the first to expose the horrors drift gill nets inflict. Divers found at the end of a mile-long, one hundred feet high net, 32 dead blue sharks, 2 hammer head sharks, a sea lion and a manta ray. Thirty small scale drift net fisheries in the Baltic Sea studies estimate 90,000 sea birds die annually in drift nets. As a result, many of these species are now endangered.

These hundreds of thousands of destroyed animals decompose, using oxygen to break down the organic matter, thus decreasing surrounding levels of dissolved oxygen. Fish, invertebrates, bacteria, and underwater plants need dissolved oxygen to respire and thus survive, thus compounding the effects on all sea life.

Finally, abandoned or lost drift nets become "ghost nets," often nearly invisible in the dim light and thus begin the entanglement/death cycle again, or they cause ecological damage to plant and substrate habitats as nets are dragged across the sea floor by currents.

Humans cannot exist, and most do not want to exist, alone on this planet. California should be at the forefront in demonstrating the respect that other life forms need and deserve. It is to our peril if we do not.

Nancy Oliver, Esq.

Concerned constituent



Submitted via email: [fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov)

September 28, 2017

Mr. Eric Sklar, President  
California Fish and Game Commission  
1416 Ninth Street, Suite 1320  
Sacramento, CA 95814

**RE: Agenda Item 25: Resolution on the National Marine Fisheries Service rejection of hard caps for the swordfish drift gillnet fishery**

Dear President Sklar and Commissioners:

Oceana is writing the California Fish and Game Commission ("Commission") to support adoption of a resolution opposing the National Marine Fisheries Service (NMFS) decision to withdraw a proposed rule to establish bycatch hard caps for the California swordfish drift gillnet (DGN) fishery. We request the resolution also express support for 100 percent monitoring of the DGN fishery and opposition to the NMFS decision to not issue regulations requiring 100 percent monitoring by 2018. The NMFS decisions to withdraw the hard cap rule and to not implement 100 percent monitoring run counter to the September 2015 recommendations of the Pacific Fishery Management Council (PFMC)<sup>1</sup>, which the State of California representatives proposed and championed as part of a comprehensive package to minimize bycatch and move toward a clean and sustainable West Coast swordfish fishery. We appreciate the Commission's September 13, 2017 letter supporting authorization of deep-set buoy gear as a new and effective method to catch swordfish with minimal bycatch.<sup>2</sup> Furthermore, we ask the Commission to continue to participate in state-led discussions to find a resolution to the ongoing conflict surrounding swordfish drift gillnets, support a transition to clean fishing gears, and request the PFMC take action to reduce bycatch in the DGN fishery.

**I. Drift Gillnet Bycatch is a Significant and Ongoing Problem**

Despite gear modifications and time and area closures, bycatch remains a major unresolved problem in the California drift gillnet swordfish fishery. Fishery data collected by onboard observers indicates that on average, the drift gillnet fishery discards 62 percent of all animals

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<sup>1</sup> <http://www.pcouncil.org/2015/09/38641/california-large-mesh-drift-gillnet-fishery-management-final-preferred-alternatives/>

<sup>2</sup> Letter, September 13, 2017, Commission Executive Director Valerie Termini to PFMC Chair Phil Anderson and NMFS West Coast Regional Administrator Barry Thom. Pacific Fishery Management Council, September 2017 Agenda Item J.6.a, Supplemental CFGC Report 1. Available: [http://www.pcouncil.org/wp-content/uploads/2017/09/J6a\\_Sup\\_CFGC\\_Rpt1\\_SEPT2017BB.pdf](http://www.pcouncil.org/wp-content/uploads/2017/09/J6a_Sup_CFGC_Rpt1_SEPT2017BB.pdf)



caught, and that approximately 22% of these discarded animals are dead prior to being released.<sup>3</sup> On average, for every swordfish landed – the primary target of this fishery – five other animals are discarded.<sup>4</sup> Observers have recorded roughly 70 different species killed in this gear, including rare megamouth and basking sharks and endangered species like leatherback sea turtles, loggerhead sea turtles and sperm whales.<sup>5</sup> A recent NMFS analysis estimates that between 2001 and 2015 the fishery entangled 1,460 marine mammals, sea turtles and seabirds.<sup>6</sup> This same analysis estimated the DGN fishery killed or seriously injured 1.5 critically endangered Pacific leatherback sea turtles from 2011-2015, which exceeds a published biological reference point for delaying population recovery (0.8 leatherback sea turtles killed or seriously injured per five years).<sup>7</sup> Pacific leatherback sea turtles are California's state marine reptile and they are recognized by NOAA to be among the eight marine species "most at risk of extinction in the near future."<sup>8</sup> The PFMC's 2015 recommendation recognized these bycatch concerns and recommended further actions to minimize and control bycatch consistent with federal law.

## II. Pacific Fishery Management Council Recommended Drift Gillnet Hard Caps

On June 12, 2017, NMFS withdrew a proposed rule that would have established protected species hard caps for the California-based swordfish drift gillnet fishery.<sup>9</sup> The proposed hard caps<sup>10</sup> were recommended by the PFMC in September 2015 following an extensive public process, including support from members of Congress, California lawmakers, the California Department of Fish and Wildlife (CDFW), businesses, sport fishing organizations, conservation NGOs, and tens of thousands of members of the public. CDFW took a lead role on the Council in developing and supporting the proposed bycatch limits. The hard caps were part of comprehensive package articulated in the Council's Swordfish Management and Monitoring Plan that included 100% monitoring of fishery catch and bycatch by 2018, removal of the observer exemption for "unobservable" DGN vessels, performance objectives on marine mammal and finfish bycatch, and reducing latent permits through the establishment of a new federal DGN permit regime.

The purpose of the hard caps was to set a clear standard and consequence for unacceptable bycatch and to provide an incentive for fishermen to fish more responsibly with drift gillnet gear, or, to voluntarily switch to more sustainable gear types. Deep-set buoy gear is a clean alternative for selectively targeting swordfish. In commercial and experimental gear trials off California, 81

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<sup>3</sup> National Oceanic Atmospheric Administration (NOAA) Observer Program, total observed discard rate (number of animals observed discarded divided by number of animals observed caught) from May 2004 to January 2017. Available: [http://www.westcoast.fisheries.noaa.gov/fisheries/wc\\_observer\\_programs/sw\\_observer\\_program/info/data\\_summ\\_report\\_sw\\_observer\\_fish.html](http://www.westcoast.fisheries.noaa.gov/fisheries/wc_observer_programs/sw_observer_program/info/data_summ_report_sw_observer_fish.html).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Carretta, J.V., J.E. Moore, and K.A. Forney. 2017. Regression tree and ratio estimates of marine mammal, sea turtle, and seabird bycatch in the California drift gillnet fishery: 1990-2015. NOAA Technical Memorandum, NOAA-TM-NMFS-SWFSC-568. 83 p.

<sup>7</sup> Curtis et al. 2015. Estimating Limit Reference Points for Western Pacific Leatherback Turtles in the US West Coast. PLOSOne. Available: <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0136452>

<sup>8</sup> NMFS. 2016. Species in the Spotlight: Survive to Thrive, web page: Accessed September 28, 2017.

[http://www.nmfs.noaa.gov/stories/2015/05/05\\_14\\_15species\\_in\\_the\\_spotlight.html](http://www.nmfs.noaa.gov/stories/2015/05/05_14_15species_in_the_spotlight.html)

<sup>9</sup> 82 Federal Register 26902. <https://www.federalregister.gov/documents/2017/06/12/2017-12070/fisheries-off-west-coast-states-highly-migratory-fisheries-california-drift-gillnet-fishery>

<sup>10</sup> 81 Federal Register 70660. <https://www.federalregister.gov/documents/2016/10/13/2016-24780/fisheries-off-west-coast-states-highly-migratory-fisheries-california-drift-gillnet-fishery>



percent of deep-set buoy gear catch to date has been swordfish, 98 percent of the catch has consisted of marketable fish species, and all discarded species have been released alive.<sup>11</sup>

In addition to the hard caps, the Council recommended in September 2015 that NMFS implement 100 percent monitoring of the fishery by 2018 and remove an exemption for "unobservable vessels." Rather than require industry-funded observers, NMFS recently informed the Council they are delaying action on 100 percent monitoring due to the costs of such monitoring to the fishing industry. The Council also recommended in 2015 that the agency maintain a minimum 30 percent observer target until 100 percent monitoring was implemented. The agency failed to do so, monitoring only 10.8 percent of fishing effort in the 2015-16 fishing season and 22.4 percent of effort in the 2016-17 fishing season.<sup>12</sup> On average, more than 80 percent of drift gillnet fishing effort is unobserved. At its September 2017 meeting, the Council revised its purpose and need for new monitoring requirements in response to a request from NMFS.<sup>13</sup>

After NMFS informed the Council it had withdrawn the proposed hard cap rule, the Council expressed its disappointment "with the NMFS decision to halt implementation of the hard cap rule." The Council explained, "the hard cap rule was intended to provide an incentive to fishermen to further avoid interactions with protected species" and that the hard caps would promote "individual responsibility... communication and innovation by fishermen to avoid [protected species] interactions".<sup>14</sup> Attached to this letter is a transcript from CDFW's representative on the Council, Ms. Marci Yaremko, who, among others, spoke to the Council's disappointment with the agency's proposed rule withdrawal.

Despite its decision not to move forward with the Council's 2015 hard cap and monitoring recommendations, NMFS is moving forward to establish federal DGN permits with the articulated purpose of quickly reducing the State of California's authority over this fishery.<sup>15</sup> On September 15, 2017, NMFS released a notice of availability and initiated a 60-day comment period on Amendment 5 to the Highly Migratory Species Fishery Management Plan to accomplish the Council's recommendation to federalize the state permit program.<sup>16</sup> Given this Council recommendation was predicated on NMFS' public commitment in March 2017 to implement hard caps by summer 2017 and 100 percent monitoring by 2018, the agency's continued push to federalize California's DGN permits amounts to a clear bait and switch. This expedited federal

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<sup>11</sup> CA DSBG 2011- January 2017. Pflieger Institute of Environmental Research (PIER), Deep-set buoy gear trials and exempted fishing permit results. Available: [http://www.pcouncil.org/wp-content/uploads/H3a\\_Att2\\_PIER\\_MAR2015BB.pdf](http://www.pcouncil.org/wp-content/uploads/H3a_Att2_PIER_MAR2015BB.pdf) and [http://www.pcouncil.org/wp-content/uploads/2017/02/J2\\_Att2\\_PIER\\_2015-16\\_DSBG\\_EFP\\_SummaryRpt\\_Mar2017BB.pdf](http://www.pcouncil.org/wp-content/uploads/2017/02/J2_Att2_PIER_2015-16_DSBG_EFP_SummaryRpt_Mar2017BB.pdf)

<sup>12</sup> National Oceanic Atmospheric Administration (NOAA) Observer Program, observer coverage (number of observed sets divided by total sets) from May 2015 to January 2017. Available: [http://www.westcoast.fisheries.noaa.gov/fisheries/wc\\_observer\\_programs/sw\\_observer\\_program\\_info/data\\_summ\\_report\\_sw\\_observer\\_fish.html](http://www.westcoast.fisheries.noaa.gov/fisheries/wc_observer_programs/sw_observer_program_info/data_summ_report_sw_observer_fish.html).

<sup>13</sup> <http://www.pcouncil.org/wp-content/uploads/2017/09/0917decisions.pdf>. Page 8

<sup>14</sup> PFMC 2017. Pacific Fishery Management Council News. Summer 2017. Pages 7-8. <http://www.pcouncil.org/wp-content/uploads/2009/12/Newsletter-Summer-2017-final.pdf>

<sup>15</sup> PFMC September 2016. Agenda Item J.5.a HMSMT Report, at 1. "The purpose of the proposed action is to rapidly and simply transition DGN permitting to MSA authority," and the stated need is to circumvent "state bills" that "have been introduced which would materially impair the Council's ability to manage the fishery."

<sup>16</sup> <https://www.federalregister.gov/documents/2017/09/15/2017-19662/fisheries-off-west-coast-states-highly-migratory-fisheries-amendment-5-to-the-highly-migratory>

permitting process also complicates and potentially impedes state-led discussions to find solutions to the ongoing stakeholder conflicts regarding the DGN fishery.

Ultimately, NMFS's decision to withdraw the hard caps rule and not to require 100% monitoring by 2018 -- while moving forward on an expedited track to establish a federal permit system -- undermines the extensive public process and participation by stakeholders including the State of California. The Commission has an important opportunity to take a stand to defend California's voice in the Council process.

### III. Requests for Commission Action

At this time, there are no catch or bycatch limits established for the drift gillnet swordfish fishery. What is more, there are no consequences or accountability measures for taking and killing protected marine life. The hard caps, however, would have established a clear standard for unacceptable bycatch, a clear consequence for exceeding those limits, and an incentive to clean-up this fishery.

The PFMC can and should take additional actions to minimize and control bycatch in this fishery and transition this fishery to using deep-set buoy and harpoon gears demonstrated to minimize bycatch, including allowing DGN permit holders to voluntarily trade in DGN permits and gear in exchange for deep-set buoy gear permits. We request CDFW and the Commission also take steps to achieve these goals.

We request the Commission adopt a resolution that strongly opposes NMFS' withdrawal of hard caps and delay of 100% monitoring. Because these decisions removed a powerful tool to reduce bycatch, the Commission should also support the Council taking commensurate measures to reduce DGN fishery bycatch and require 100% monitoring. We also request that the Commission adopt a policy of fully transitioning California's swordfish fishery to deep-set buoy and harpoon gears.

Thank you for your time and attention to this important issue.

Sincerely,



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

**Attachment:** Yaremko, M. 2017. California Department of Fish and Wildlife statement on NMFS hard cap rule withdrawal. Pacific Fishery Management Council. June 2017.



June 12<sup>th</sup> 2017

Transcript of Marci Yaremko, California Department of Fish and Wildlife (CDFW)  
June 2017 Pacific Fishery Management Council Meeting

Regarding the National Marine Fisheries Service (NMFS) report on the withdrawal of a proposed rule implementing hard caps for the California drift gillnet swordfish fishery.

Transcribed from Pacific Fishery Management Council audio file: 6-12-17pm1Copy.mp3, at 1:30. Audio file available at [ftp://ftp.pcouncil.org/pub/R1706\\_June\\_2017\\_Recordings/](ftp://ftp.pcouncil.org/pub/R1706_June_2017_Recordings/)

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Thank you Mr. Vice Chair, and thank you for the time to address the Council on this important issue to California. It's our view that NMFS, and the Council, and the fishery lost an opportunity here. Thanks to all on the Council [Pacific Fishery Management Council], and all in the audience for your time on this issue and I appreciate the chance to express disappointment with the decision on behalf of the state.

This Council expressed its intent to change management of this fishery using tools available to us under Magnuson to create a new framework to move this fishery forward. Many are asking what comes next after this decision is made and we heard a lot in testimony. The answer that I thought I might give before doesn't appear to be viable. I wanted to see the fishery itself, have an opportunity to achieve the standards we imposed, perhaps to receive MSC [Marie Stewardship Council] or some other green label certification for performing within our standards and the chance to develop new markets as a result. And I wanted the Council to have a solid basis to look at next steps and other new and innovative approaches to redevelop the West Coast swordfish fishery with this gear. We had that pathway forward and now I just feel like the road fell out from under us and we're stuck in a sinkhole.

There were a number of reasons for the Council's recommendations on hard caps and as Michelle [Michele Culver, WDFW] artfully explained just a second ago, NMFS appears to have chosen to consider only one of them. What the additional protections would have afforded was benefit to the ESA [Endangered Species Act] listed marine mammals and turtles. The policy and social reasons for the rule apparently were not considered or were considered and dismissed. And yet, those reasons are strongly embedded in our MSA [Magnuson Stevens Fishery Conservation and Management Act] framework in our National Standards.

It is the Council's job to consider these elements when balancing competing interests to help us make difficult decisions and we did. The rule would have established a Bright Line Standard, one that when crossed would shut the fishery down just in the same way we manage our other fisheries domestically with applications of ACLs [annual catch limits] and accountability measures. Everyone - the public, the government, NGOs, and the fishermen themselves - are acutely aware of what the limits are and what happens when you exceed them. Yes, there is a TRT [take reduction team] process that gets in swing when PBR [potential biological removal] and ITS [incidental take statement] limits are exceeded and groups of scientists and representatives get together to talk but there's no immediate action that results. It's just a series of meetings, plans and negotiations that precede the development of new federal

rules designed to mitigate the consequences; actions, which often take years to fully develop and implement.

Equally important as the Bright Line Standard, some of you have mentioned this already, was the Council's goal in changing behavior with this rule. It was a way to ensure this fleet would take accountability for its actions and force operators to think before making a set to ensure that the risk of entanglements are low. NMFS has implemented hard caps in other fisheries under its jurisdiction, notably including the Hawaii longline fisheries for swordfish. It is pretty clear that those fisheries have maintained if not improved economic viability as landings from that fishery seem to be on a steep upward trajectory into California ports in recent years.

The administrative record will also show that the Council on its consideration of hard caps deliberately considered the potential economic impacts of the rule and if anyone looked at the record, the Council initially proposed hard caps that were only for one year in duration, rather than two. Our recommendation was refined following industries' unequivocal statement to us that a measure that invoked a one and done management response made the costs associated with gearing up to fish for a season too prohibitive. The Council considered that input and made adjustments such that the recommendation included cap levels that all had numbers greater than one animal and hence, we recommended the two year rolling cap alternative.

Meanwhile on the other side of the Sustainable Fisheries Division house- in the groundfish world, apparently a different standard is applied when viewing Council recommendations and prospective economic harm to individuals. As I think we all recall in the IFQ [individual fishing quota] program, if an individual exceeds their allowable individual quota level, they are immediately shut down and not allowed to re-enter the fishery until they can cover their overage, which can take years depending on the amount of overage and the cost. And during that time, they are not allowed to participate in any other federal groundfish fishery. The Council and NMFS stood firmly behind those rules and it has been clear that exceeding those limits has consequences. Nor have we deviated from that approach.

In the six years since the IFQ program's been in effect, three vessels have had lighting strikes and have had to leave the fishery. Despite requests for the Council to reconsider its position on the consequences of exceeding a quota limit and trying to find a way for those vessels to re-enter the fishery, the Council and NMFS stood firm. I hadn't forgotten the testimony we heard from Jeff Lackey when his vessel accidentally made a disaster tow with overfished rockfish, and the resulting consequences of that fish leaving the fishery, and last I checked they are still trying to pay down their debts on the overage. The negative economic consequences to these vessels is likely greater than what it would be seen on the entire drift net fishery where a hard cap effectively to close the DGN [drift gillnet] fishery.

So I have trouble understanding how NMFS can use two different sets of standards when it comes to economic harm. I also take issue with the statement that the participants in the DGN fishery do not have other viable alternatives. California fishermen rarely rely on one fishery for their sole source of income, but instead participate in multiple fisheries as part of their fishery portfolio in business plans. I haven't had the chance to review the 106 page final Environmental Assessment that was released after the

Council meeting started but I will do so. I will be paying close attention to the discussion of alternative fisheries available to the DGN fishermen upon a closure resulting from a hard cap attainment.

I don't recall CDFW being consulted on that analysis on that state managed fisheries opportunity, particularly fisheries that fall under the authority of the state's general gillnet permit. This permit is not specific to any fishery target, but it is required for the use of gillnet gear so all of the current DGN permittees have this state issued permit. These fisheries for California halibut, white seabass and angel shark are worth millions of dollars annually. The state requires DGN permittees to concurrently hold this permit so I am perplexed why NMFS doesn't consider this a viable alternative fishery to participate in should the DGN fishery close due to the attainment of a hard cap.

Moreover, I recall our DGN advisors from the Advisory Subpanel actually recommended a mitigation measure to the Council should hardcaps be attained. They suggested to us that in the event a cap was attained, the alternative of being able to fish using buoy gear might be an approach to mitigate the effects of the closure. While the council didn't take that up in its development of its FPA and its recommendations to NMFS, as far as I am aware, that recommendation is still a viable one that NMFS could have maybe considered putting back before the Council, before withdrawing the proposed action.

NMFS reported to us today on plans to implement the Council's recommendation for a 100% monitoring of the DGN fishery, which was the second part of the council's September 2015 motion. There is vagueness and uncertainty in the proposed rulemaking, which would include the rule to remove the unobservable exception that is currently applicable to DGN vessels. My discomfort is growing that this recommendation will be effective by regulation by next year. It's feeling more and more like NMFS is saying like it's only going to implement the HMS recommendations from the Council that it likes, such as the limited entry drift net permit.

The DGN fishery is a California fishery. We understood that the Council process was [the] venue for the state to provide management guidance on fishery activities originating out of and returning to California ports. CDFW has participated and contributed to discussions and developed management strategies and plans in the spirit of co-managing these fishery resources off our coast. The HMS FMP [Highly Migratory Species Fishery Management Plan] has been around for well over a decade now, yet we've only made a few amendments to the plan. Mostly administrative in nature and as required by NMFS for reasons such as compliance with the latest national standard and the omnibus amendment to include unmanaged forage fish protections and we'll take up the housekeeping amendment agenda item next.

Meanwhile the Council, its members, the stakeholders, NMFS staff and the public continue to invest millions in the Council process to support management under the HMS FMP. What I have to ask is what the point of all of that is and what is there to show for it other than a growing list of disapprovals and subliminal messages of, "no we can't"?

I thought the goal was to actively manage HMS under authority of the MSA but instead the letter from NMFS to the Council just encourages us to continue to participate in the TRT process if we wish to develop measure to reduce probability of marine mammal entanglement in the DGN fishery.

So after several years of investment in the HMS planning and Council process it just seems there's not much interest in doing much to regulate the fishery under MSA so I will just wrap this up with a few questions.

What is the value of the plan if we can't do anything under its authority? And how does NMFS justify applying different standards to West Coast fisheries under its jurisdiction regarding expected economic impacts of regulations?

And maybe just to end on a little brighter note: I would like to offer a comment on the management team report regarding the performance objectives and thank the management team for that analysis. The table shows the fishery largely attained our standards with just one exception and I'd like to thank the management team for reminding the Council what the goal is with our annual review of the standards, which is to evaluate if bycatch or protected species interaction levels are consistently at a level higher than one of the performance objectives the Council could consider whether additional management measures are necessary to minimize bycatch or reduce protected species interactions in the fishery. I guess I'd like to just note that in my view this simple and low workload analysis worked and apples to apples is good enough for me right now and in light of our goal of doing a general year by year review of performance against a clear standard I do support the discussion and adding this to our agenda for next year.

Thank you.

### End transcript ###



**Commissioners**  
**Eric Sklar**, President  
Saint Helena  
**Jacque Hostler-Carmesin**, Vice President  
McKinleyville  
**Anthony C. Williams**, Member  
Huntington Beach  
**Russell E. Burns**, Member  
Napa  
**Peter S. Silva**, Member  
El Cajon

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

**Valerie Termini**, Executive Director  
1416 Ninth Street, Room 1320  
Sacramento, CA 95814  
(916) 653-4899  
[www.fgc.ca.gov](http://www.fgc.ca.gov)

## Fish and Game Commission



*Wildlife Heritage and Conservation*  
*Since 1870*

September 13, 2017

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

Barry Thom, Regional Administrator  
West Coast Region  
NOAA Fisheries  
7600 Sand Point Way NE  
Seattle, WA 98115

Subject: Request to consider the range of alternatives for deep-set buoy gear, including linked buoy gear, and authorize use of this gear type

Dear Chair Anderson and Regional Administrator Thom:

It has come to the attention of the California Fish and Game Commission (Commission) that the Pacific Fishery Management Council (PFMC) is considering authorizing and permitting new gear types for the West Coast commercial swordfish fishery, and is poised to adopt a range of alternatives for this authorization at its September 2017 meeting. I am writing on behalf of the Commission to support your action to consider new gear authorization to open additional access for California fishermen to fish this healthy and sustainable fish stock. The Commission is aware that research on deep-set buoy gear (DSBG), which includes both standard buoy gear and linked buoy gear (LBG) types, is ongoing; the Commission has been tracking and supports advancing such research that could lead to the use of alternative gear types in the swordfish fishery.

Over the past twenty years, the number of U.S. West Coast, large-mesh, drift gillnet swordfish fishery participants and landings have significantly declined, attributed in large part to regulations implemented to mitigate bycatch in the fishery. There remain concerns regarding management measures implemented to address bycatch, and the subsequent economic impacts to fishermen and coastal communities, despite a healthy stock and high demand for swordfish. Through a combined effort of state, Federal and private sector funding, the ongoing research and development of DSBG has resulted from an effort to design a gear type that could reduce potential for interactions with

finfish and protected species to the extent practicable, while simultaneously increasing fishery opportunities and economic viability by more selectively targeting swordfish. The Commission appreciates the extensive time and effort expended by PFMC, its staff, and staff of the National Marine Fisheries Service, to facilitate this experimental research.

One of the Commission's goals is to support California's sustainable coastal fishing communities. To maintain a robust coastal fishing economy, fisheries need both adaptive management and flexibility to fish a variety of selective gear types to maximize potential catch and minimize bycatch under varying oceanographic conditions. One of the objectives articulated by the Magnuson-Stevens Fishery Conservation and Management Act for a healthy fishery stock, such as West Coast swordfish, is to provide for opportunity and to ensure the economic viability of the swordfish fishery with sustained participation of West Coast fishing communities while, to the extent practicable, avoiding and minimizing bycatch and bycatch mortality.

Results from collaborative research and experimental fishing permit trials of DSBG conducted thus far indicate that both configurations of this highly selective gear can minimize interactions with protected species and minimize finfish bycatch while expanding fishing opportunities, increasing domestic landings, and contributing to the profitability of the swordfish fishery.

Authorizing DSBG configurations will help to address bycatch concerns, while helping achieve optimum yield of a healthy swordfish stock and providing socioeconomic benefits for fishermen and coastal communities. As PFMC considers a range of alternatives for DSBG fishery authorization, the Commission asks that PFMC thoughtfully consider DSBG configurations while also including incentives and mechanisms for drift gillnet fishermen to trade in their gear and permits in exchange for DSBG permits.

Thank you,

A handwritten signature in black ink, appearing to read 'Valerie Termini', with a stylized, flowing script.

Valerie Termini  
Executive Director

cc: Members, California Fish and Game Commission  
Charlton Bonham, Director, California Department of Fish and Wildlife  
Craig Shuman, Marine Region Manager, California Department of Fish and Wildlife  
Marci Yaremko, State/Federal Marine Fisheries Program Manager, California  
Department of Fish and Wildlife