

June 17, 2021

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

Re: Agenda Item F.5 – Drift Gillnet Fishery Hard Caps

Dear Chair Gorelnik and Council members:

Oceana supports hard caps on the bycatch of protected species taken in the California drift gillnet (DGN) swordfish fishery as part of an overall approach to avoid, limit, and reduce bycatch in this indiscriminate fishing gear. Hard caps along with 100 percent monitoring are a critical component of the Pacific Fishery Management Council's comprehensive plan to achieve a profitable and productive domestic U.S. West Coast swordfish fishery that minimizes bycatch. Hard caps alone, however, will not solve the fundamental environmental impacts associated with the continued use of this gear type in the California Current Ecosystem. To protect sensitive marine life, reduce bycatch and maintain a sustainable swordfish fishery, the West Coast swordfish fishery must transition to using a combination of harpoon and deep-set buoy gear, and prohibit the use of large mesh drift gillnets.

We encourage the Council to recommend hard cap alternatives similar to those the Council adopted in 2015. The range of alternatives should include the final preferred alternative adopted in 2015 and a purpose and need that reflects the goal to transition away from drift gillnet gear. In this letter we provide additional background on drift gillnet bycatch, the transition to deep-set buoy gear and suggested language for the hard cap purpose and need statement.

- I. Large-mesh drift gillnets are a highly indiscriminate gear type and NMFS has failed to implement Council recommended actions to limit bycatch and observe the fleet.**

The DGN fishery uses mile-long drift gillnets set at night in ocean waters off California to target swordfish and thresher sharks. These drift nets create deadly traps for a wide

array of iconic ocean wildlife.¹ More than 70 non-target species including whales, dolphins, seals, sea lions, sea turtles, sharks, tunas, marlins, and other fish drown or become critically injured in these nets.² This fishery catches and throws back more marine life than it keeps. Approximately 60 percent of the DGN catch, on average, since establishment of the Pacific Leatherback Conservation Area (PLCA) was discarded overboard;³ a time that largely reflects the current management regime for the fishery. A quarter of the animals caught as bycatch and pulled from the nets are dead and the fate of surviving animals that are released is unknown.⁴ While time and area closures (including the PLCA) and gear modifications (pingers and depth extensions) have been in place since 2001, the fishery largely operates without accountability measures. Most highly migratory species do not have annual catch limits and nearly 80 percent of the fishing effort over the past 10-years has been unobserved.

Management of the drift gillnet swordfish fishery has drastically fallen behind the global curve of responsible fishery management. Swordfish drift gillnets are prohibited in many regions around the world like the Mediterranean Sea and off Canada. On the high seas, large scale driftnets are prohibited. In the U.S., swordfish driftnets are prohibited off the East Coast,⁵ and on the West Coast, they are not permitted by the states of Oregon⁶ or Washington.⁷ In fact, no other U.S. region allows large mesh drift gillnets.

- a. *The PFMC recommended hard caps and 100 percent monitoring in 2015 with NMFS support.*

In September 2015, after a years-long process incorporating input from fishery stakeholders, the Council recommended that the National Marine Fisheries Service

¹ Carretta JV, Price T, Petersen D, Read R (2004) Estimates of Marine Mammal, Sea Turtle, and Seabird Mortality in the California Drift Gillnet Fishery for Swordfish and Thresher Shark, 1996-2002. *Marine Fisheries Review* 66(2) 21:30

² A sample of photographs showing some of the species entangled and killed by swordfish drift gillnets off California can be viewed here: <https://usa.oceana.org/responsible-fishing/california-drift-gillnet-aftermath-photos>

³ 2001/02 to 2019/20 fishing years. National Oceanic Atmospheric Administration (NOAA) Observer Program drift gillnet fishery catch and discard data. Available: <https://www.fisheries.noaa.gov/west-coast/fisheries-observers/west-coast-region-observer-program>

⁴ Id.

⁵ 64 Fed. Reg. 4055, Jan. 27, 1999

⁶ PFMC (2021). 2020 Highly Migratory Species Stock Assessment and Fishery Evaluation Report. Pacific Fishery Management Council, Portland, OR. at p12.

⁷ Drift gillnet gear is not a legal gear for targeting swordfish or sharks in Washington and under federal law, all waters west of Washington state are closed to drift gillnets (50 CFR §660.713 d(8)).

(NMFS) increase monitoring of the DGN fleet to 100 percent and set hard caps on the injury and mortality of nine sea turtle and marine mammal species most at risk from entanglement in swordfish drift gillnets. If these hard caps were reached, the fishery would close for up to 2 years on a rolling basis.

The hard caps applied to endangered fin, humpback, and sperm whales, short-fin pilot whales, and common bottlenose dolphins; as well as endangered leatherback, loggerhead, olive ridley, and green sea turtles. NMFS supported and voted in favor of the action in 2015 when the Council made its final recommendation. During Council deliberations on the final action, NMFS stated that the Council built a strong record for this action under the MSA including taking into account the economic and social impacts of this action to communities up and down the coast.⁸

b. *NMFS reversed course in 2017, withdrew the rule and failed to implement or defend the Council's recommendations.*

The agency released a draft rule implementing the hard caps in October 2016. In an unprecedented move coinciding with a new administration that was hostile to conservation and which promoted deregulation,⁹ NMFS withdrew the proposed rule in June 2017 and chose not to propose a rule to require 100 percent monitoring.

In doing so, NMFS ignored the will of its federal fishery advisors, the State of California, California state legislators and Congressional members, and the more than 58,000 members of the public who weighed in to support these caps. After NMFS illegally withdrew the proposed rule on June 12, 2017, a federal district court remanded the rule to NMFS on October 24, 2018. During this time NMFS made no attempt to consult with the Council on proposed changes to the regulations. NMFS had ample opportunity to consult with the Council numerous times including at the November 2018, March 2019, April 2019, June 2019, September 2019, and November 2019 Council meetings as well as outside of these meetings.

⁸ Assistant Regional Administrator, Bob Turner, NMFS speaking in support for the overall hard cap motion and against the idea of not including the proposed caps for marine mammals. Council recorded audio file: 9-13-15am2Copy.mp3 at 1:14, available at <https://www.pccouncil.org/documents/2015/09/september-2015-meeting-recordings.pdf/>.

⁹ NOAA Fisheries (2018). Presentation to the CCC highlighting the drift gillnet hard cap rule withdrawal as part of its 'deregulatory' agenda. <https://media.fisheries.noaa.gov/dam-migration/reg-reform-update-feb2018-ccc.pdf>

Now, after 6 years and multiple lawsuits, the issue of hard caps is back before the Council. The Council should continue to honor the policy choices previously made. All social, economic, and ecological factors were carefully weighed by the Council and NMFS in crafting the initial recommendation as indicated by NMFS's statements during Council deliberations, particularly regarding the social value of whales and sea turtles. What is more, the California state Drift Gillnet Transition Program, the economic value of the DGN fishery, and the advent of a more selective and economically viable alternative gear type – deep set buoy gear – entirely undercuts the agency's rationale for withdrawing the original hard caps rule; the potential economic impact of hard caps on the DGN fleet.¹⁰

II. Deep-set Buoy Gear is an Economically Viable Alternative for Selectively Targeting Swordfish

The authorization of deep-set buoy gear must be viewed as an integral component of a broader approach to transition the current swordfish fishery using DGN gear into one that is both ecologically and economically sustainable. Up to 98 percent of animals caught with deep-set buoy gear are swordfish or other marketable catch.¹¹ The NMFS report for this meeting shows that 92.4% of the standard deep-set buoy gear catch in 2020 was swordfish (1,257 swordfish) with zero protected species catch.¹² PacFin data indicates that in 2020, deep-set buoy gear caught nearly four times more swordfish than drift gillnets did, and garnered an 82% higher price per pound due to the quality of the fish and sustainability of the gear.¹³

In concert with the Council's work to minimize bycatch in the DGN fishery including hard caps, performance objectives and increased monitoring, authorization of a DSBG

¹⁰ Oceana (November 6, 2020) letter to the Pacific Fishery Management Council. Agenda Item I.4 Drift Gillnet Hard Caps Update. Available: <https://pfmc.psmfc.org/CommentReview/DownloadFile?p=c3a86287-b53c-4ca3-948a-c1b4e6423e02.pdf&fileName=Oceana%20PFMC%20Comment%20Letter%20DGN%20Hard%20Cap%20-%20Agenda%20Item%20I.4%20November%202020.pdf>

¹¹ PIER DSBG EFP Update, June 2018: https://www.pcouncil.org/wp-content/uploads/2018/05/G4_Att1_PFMC_2017-2018.BB_PIER-DSBG.EFP_Update_Jun2018BB.pdf AND. PIER (2015). Exempt Fishery Proposal Application for Deep-Set Buoy Gear. Pacific Fishery Management Council. March 2015. Available: http://www.pcouncil.org/wp-content/uploads/H3a_Att2_PIER_MAR2015BB.pdf

¹² PFMC. Agenda Item F.3.a NMFS Report 1. June 2021. <https://www.pcouncil.org/documents/2021/06/f-3-a-nmfs-report-1.pdf/>

¹³ Pacific Fisheries Information Network (PacFIN) APEX reporting system, 2020 swordfish landings. Accessed June 14, 2021.

fishery will provide new clean fishing opportunities for a sustainable West Coast swordfish fishery.

III. The Drift Gillnet Transition is Underway

In response to the lack of federal action, the state of California enacted Senate Bill 1017 establishing a transition program whereby drift gillnet fishermen are financially compensated for surrendering their nets and permits. Oceana delivered \$1 million to the state of California, matching the \$1 million in state funds deposited by the California Ocean Protection Council. California's 2021-2022 budget bill includes an additional \$1.3 million to complete the state's transition away from deadly drift gillnets. Pending approval of the state budget, all 44 California drift gillnet permit holders who stated their intent to participate in the California Drift Gillnet Transition Program will be compensated for voluntarily surrendering their permits and large mesh drift gillnets. Only four active DGN permit holders who did not state their intent to participate, will remain in the fishery. The transfer of this funding triggered a sunset of state DGN permits on January 31, 2024.

Last year, Congress passed legislation prohibiting large mesh drift gillnets nationwide and California Senator Dianne Feinstein reintroduced the bill in this Congress. Like the California state Drift Gillnet Transition Program, the *Driftnet Modernization and Bycatch Reduction Act* would phase-out large mesh drift gillnets within five years and authorize the National Oceanic and Atmospheric Administration to help the commercial fishing industry transition to more sustainable gear types, including a grant program.¹⁴

Hard caps will continue to play an important role in preventing increases in bycatch of endangered species and other marine life during the phase-out period and minimizing bycatch and bycatch mortality.

IV. Adopt a Hard Cap Purpose and Need Statement that Reflects the Transition to a Clean and Sustainable West Coast Swordfish Fishery

We reviewed the draft Purpose and Need statement for hard caps prepared by the Highly Migratory Species Management Team. To align the hard caps with the broader

¹⁴ Senator Dianne Feinstein (2021). Feinstein, Capito Reintroduce Bill to Protect Whales, Dolphins, Sea Turtles from Drift Gillnets. Available: <https://www.feinstein.senate.gov/public/index.cfm/press-releases?id=63B0CFE1-A39D-4FB7-B1A7-7A8C5C6BB54B>

vision of a transition to a more selective West Coast swordfish fishery, we propose a purpose and need statement for hard caps as follows:

The purpose of hard caps is to incentivize fishing practices and tools that avoid and minimize incidental catch of non-target and protected species in the drift gillnet fishery to address National Standard 9 and Section 303 of the MSA. The need is to ensure that the drift gillnet fishery minimizes the incidental take and bycatch of non-target and protected species.

V. Conclusion

Oceana urges the Council to adopt the strongest possible protected species hard caps while continuing to focus on the future of the West Coast swordfish fishery by completing the authorization of deep-set buoy gear. It is time to move away from indiscriminate and antiquated swordfish drift gillnets.

Until then, the Council should develop hard caps intended to hold the DGN fleet accountable while the fishery transitions to more selective gear types, prevent increases in bycatch of sensitive bycatch species, and incentivize changes to fishing behavior and fishing methods that reduce bycatch consistent with the Magnuson Stevens Fishery Conservation and Management Act. Together, these efforts will pave the way for a better managed West Coast swordfish fishery with incentives that empower fishermen to make more sustainable fishing decisions.

Sincerely,



Ben Enticknap
Pacific Campaign Manager and Senior Scientist